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# PREVENTION OF DISCRIMINATION

## The rights of non-citizens

## Progress report of the Special Rapporteur, Mr. David Weissbrodt, submitted in accordance with Sub-Commission decisions 2000/103 and 2001/108, as well as Commission decision 2002/107

## Addendum

## United Nations activities

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## I. INTRODUCTION

1. This addendum (E/CN.4/Sub.2/2002/25/Add.1) to the progress report of the Special Rapporteur on the rights of non-citizens (E/CN.4/Sub.2/2002/25) supplements the 2001 addendum (E/CN.4/Sub.2/2001/20/Add.1) to the preliminary report of the Special Rapporteur (E/CN.4/Sub.2/2001/20) by providing updated jurisprudence and concluding observations with respect to the rights of non-citizens. The jurisprudence and concluding observations in this addendum cover treaty-monitoring body sessions from January 2001 through March 2002. This addendum also includes new material on recent jurisprudence of the International Court of Justice and the work of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance as they relate to the rights of non-citizens. In addition, it presents the Global Consultations process launched by the Office of the United Nations High Commissioner for Refugees (UNHCR) in 2000 to enhance the protection of refugees - a particular group of non-citizens.

2. Drawn from periodic reports on national conditions, the jurisprudence and concluding observations discussed below provide a general overview of the problems most commonly addressed by the monitoring bodies. As such, the information provides a basis for some reflection on the frequency of various problems but does not necessarily portray the current situation in a particular country as of the date of this report. The Special Rapporteur would welcome any supplemental information and corrections.

## II. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

3. The Committee on the Elimination of Racial Discrimination (CERD) examined cases of discrimination against non-citizens in its consideration of a number of periodic reports at its fifty-eighth session from 6 to 23 March 2001, its fifty-ninth session from 31 July to 17 August 2001, and its sixtieth session from 4 to 22 March 2002.

### Jurisprudence

4. In 2001, CERD adopted the following view on the rights of non-citizens, pursuant to its mandate under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination to consider communications.

5. At its fifty-eighth session in 2001, CERD considered *F.A. v. Norway*.[1] The communication alleged that a private housing agency sold the petitioner a list of available housing accommodations which, for certain housing, contained discriminatory requirements such as "no foreigners desired", "Whites only", or "Norwegians with permanent jobs". The owner of the housing agency was eventually charged with violating section 349a of the Norwegian Penal Code, which reads as follows:

> "Any person who in an occupational or similar activity refuses any person goods or services on the same conditions as apply to others because of his religion, race, colour of skin, or national or ethnic origin, shall be liable to fines or imprisonment for a term not exceeding six months ...

...

The same penalty shall also apply to any person who incites or is in any other way accessory to any act mentioned in the previous paragraph."

The Oslo City Court, however, acquitted the owner of the housing agency.[2] The Norwegian Supreme Court rejected an appeal of the Oslo City Court's acquittal, finding that the acts in question were not covered by section 349a.[3] Although CERD found the communication inadmissible on the grounds that it was not filed in a timely manner,[4] the Committee did take the "opportunity to urge the State party to take effective measures to ensure that housing agencies refrain from engaging in discriminatory practices and do not accept submissions from private landlords which would discriminate on racial grounds", and recalled that in its concluding observations on the fifteenth periodic report of Norway it had "expressed concern that persons seeking to rent or purchase apartments and houses were not adequately protected against racial discrimination on the part of the private sector", and "recommended that Norway give full effect to its obligations under article 5 (e) (iii) of the Convention".[5]

**Concluding observations**

6. CERD reflected its continuing concern about various forms of discrimination against non-citizens in its consideration of several States parties' reports at its fifty-eighth, fifty-ninth, and sixtieth sessions. In doing so, CERD made concluding observations and comments on the rights of non-citizens with regard to numerous countries, reflecting its mandate under the Convention to address discrimination against non-citizens.

7. In examining the fifteenth and sixteenth periodic report of Iceland[6] at its fifty-eighth session, CERD noted "that Icelandic nationality is lost by persons who acquire another nationality by their own application, while dual citizenship is allowed for foreign nationals who acquire Icelandic citizenship".[7] The Committee therefore recommended that the State party consider the possibility of acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, which prohibit deprivation of nationality on discriminatory grounds and stipulate that a State party should grant nationality to persons born on its territory who would otherwise be stateless.[8]

8. At the same session, CERD considered the initial and second periodic reports of Japan,[9] in which, with regard to children of foreign nationality residing in Japan, it noted "that elementary and lower secondary education is not compulsory".[10] The Committee was concerned that "different standards of treatment in this respect", with reference to articles 3 and 5 (e) (v) of the Convention, "may lead to racial segregation and the unequal enjoyment of the rights to education, training and employment". It therefore recommended "that the State party ensure that the rights contained in article 5 (e) are guaranteed without distinction as to race, colour, or national or ethnic origin".[11]

9. Also with respect to Japan, the Committee expressed concern about discrimination against the Korean minority.[12] CERD was particularly concerned "that studies in Korean are not recognized and that resident Korean students receive unequal treatment with regard to access to higher education".[13] The Committee, therefore, recommended that the "State party undertake

appropriate measures to eliminate discriminatory treatment of minorities, including Koreans, in this regard and to ensure access to education in minority languages in public Japanese schools".[14] Furthermore, "although there are no longer any administrative or legal requirements for Koreans applying for Japanese nationality to change their names to a Japanese name", the Committee expressed its concern "that authorities reportedly continue to urge applicants to make such changes and that Koreans feel obliged to do so for fear of discrimination".[15] The Committee, "considering that the name of an individual is a fundamental aspect of the cultural and ethnic identity", recommended "that the State party take the necessary measures to prevent such practices".[16]

10. At the fifty-eighth session, the Committee also examined the fifteenth periodic report of Germany.[17] The Committee was concerned about "repeated reports of racist incidents in police stations, as well as ill-treatment inflicted by law enforcement officials on foreigners, including asylum-seekers, and German nationals of foreign origin".[18] The Committee therefore urged the "State party to strengthen existing educational measures for civil servants who deal with issues involving foreigners, including asylum-seekers, and German nationals of foreign origin".[19]

11. In reviewing the ninth, tenth, and eleventh periodic reports of Sudan[20] at the same session, the Committee noted "that different standards of treatment are reportedly used for different categories of asylum-seekers, i.e. whereas asylum-seekers from mainly neighbouring countries to the east, west and south, except Chad, are granted refugee status, asylum-seekers from Arab countries are allowed to stay on an informal and unofficial basis".[21] CERD therefore recommended that Sudan "apply international and regional standards pertaining to refugees equally, regardless of the nationality of the asylum-seeker".[22]

12. In examining the eighth and ninth periodic reports of China[23] at is fifty-eighth session, CERD reiterated "its concern regarding the situation of foreign domestic workers in the Hong Kong Special Administrative Region, mainly from the Philippines, Indonesia and Thailand, and the existence of certain rules and practices, such as the so-called 'two-week rule', which may be discriminatory in effect".[24] The "two-week rule" was introduced in April 1987 and regulates the conditions of stay of foreign domestic workers in Hong Kong. Under the rule, foreign domestic workers, upon termination of employment, cannot seek other employment within Hong Kong and must leave the country within two weeks of said termination.

13. In considering the fifteenth and sixteenth periodic reports of Cyprus[25] at the same session, CERD expressed concern regarding "information on cases of violence committed by police against aliens entering Cyprus illegally" and recommended that the Government "continue to monitor such incidents closely and take appropriate steps to deal with them".[26]

14. During its examination of the thirteenth, fourteenth, fifteenth, and sixteenth periodic reports of Egypt[27] at its fifty-eighth session, CERD expressed "its concern at the nationality law, which prevents an Egyptian mother married to a foreigner from passing on her nationality to her children".[28] In the same concluding observations, CERD also expressed its concern that "children born to Egyptian mothers and foreign fathers are faced with discrimination in the field of education".[29]

15. While considering the seventh, eighth, and ninth periodic reports of Sri Lanka[30] in August 2001, CERD expressed its concern "at the fact that a large number of Tamils of Indian origin, particularly plantation workers and their descendants, have still not been granted citizenship and that many of them even continue to be stateless".[31] CERD went on to note that "Tamils without Sri Lankan citizenship are allegedly discriminated against and do not fully enjoy their economic, social and cultural rights".[32] The Committee therefore recommended that "early and effective measures be taken to solve this problem and that these persons should not be threatened with repatriation".[33]

16. At the same session, CERD considered the fifteenth and sixteenth periodic reports of Ukraine.[34] In doing so, it noted "efforts made by the State party to facilitate the resettlement and rehabilitation of Crimean Tartars" but reiterated "its concern regarding the difficulties experienced by the Crimean Tartars in acquiring Ukrainian citizenship".[35] At the same session, the Committee "was disturbed by the oral statement of the delegation that many nationals of a certain African country are involved in drug trafficking in Ukraine". CERD strongly recommended "that the State party take actions to counter any tendency to target, stigmatize or stereotype, which could lead to racial profiling of particular population groups by police and immigration officers as well as in the media and society at large".[36]

17. In considering the initial, second, and third periodic reports of the United States of America,[37] also at its fifty-eighth session, the Committee noted "with concern the incidents of police violence and brutality, including cases of deaths as a result of excessive use of force by law enforcement officials, which particularly affect minority groups and foreigners".[38] The Committee recommended "that the State party take immediate and effective measures to ensure the appropriate training of the police force with a view to combating prejudices which may lead to racial discrimination and ultimately to a violation of the right to security of persons"[39] and "that firm action be taken to punish racially motivated violence and ensure the access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage suffered as a result of such actions".[40]

## III. HUMAN RIGHTS COMMITTEE

18. In 2001, the Human Rights Committee met for its seventy-first session from 19 March to 6 April, its seventy-second session from 9 to 27 July, and it seventy-third session from 15 October to 2 November. In 2002, the Committee met for its seventy-fourth session from 18 March to 5 April.

### Jurisprudence

19. The Human Rights Committee, established pursuant to article 28 of the International Covenant on Civil and Political Rights, has adopted the following views in 2001 and early 2002 on the rights of non-citizens, reflecting its mandate under the (first) Optional Protocol to the International Covenant on Civil and Political Rights to consider individual communications.

20. At its seventy-second session, the Committee reviewed *Blazek, Hartman and Krizek v. Czech Republic*,[41] which concerned the petitions of persons who are naturalized United States citizens, who were born in Czechoslovakia and lost Czechoslovak citizenship by virtue of

the 1928 Naturalization Treaty between the United States and Czechoslovakia, which precludes dual citizenship. The petitioners left Czechoslovakia after the Communist takeover in 1948. Their properties in Czechoslovakia were subsequently confiscated pursuant to confiscation regulations of 1948, 1955, and 1959.

21. The petitioners claimed to be victims of violations of their Covenant rights by the Czech Republic in connection with the confiscation of their properties by the Communist authorities and the discriminatory failure of the democratic Governments of Czechoslovakia and of the Czech Republic to make restitution. They were denied restitution because they were not Czech citizens. The petitioners alleged a violation of article 26 of the Covenant which guarantees all persons equality before the law and prohibits "any discrimination ... on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

22. The Committee found that the Czech Republic had violated article 26 and that the State party was under an obligation to "provide the authors with an effective remedy, including an opportunity to file a new claim for restitution or compensation".[42] Furthermore, the Committee encouraged "the State party to review its relevant legislation and administrative practices to ensure that neither the law nor its application entails discrimination in contravention of article 26 of the Covenant".[43]

23. In reaching its conclusion, the Committee recalled its views in *Alina Simunek v. Czech Republic*[44] and *Joseph Adam v. Czech Republic*,[45] where it held that article 26 had been violated: "The authors in that case and many others in analogous situations had left Czechoslovakia because of their political opinions and had sought refuge from political persecution in other countries, where they eventually established permanent residence and obtained a new citizenship. Taking into account that the State party itself is responsible for [their] ... departure, it would be incompatible with the Covenant to require [them] ... to obtain Czech citizenship as a prerequisite for the restitution of their property, or, alternatively, for the payment of compensation".[46]

24. Also at the seventy-second session, the Committee considered *Winata and Lan Li v. Australia*.[47] The petitioners were a married couple originally from Indonesia. They had lost their Indonesian citizenship and were thus stateless. They petitioned on their own behalf as well as on the behalf of their 13-year-old son, a citizen of Australia. The petitioners, after overstaying their visas to Australia, faced deportation to Indonesia. They alleged violations of their Covenant rights embodied in articles 17, 23, paragraph 1, and 24, paragraph 1.

25. Article 17 states:

> "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
>
> "2. Everyone has the right to the protection of the law against such interference or attacks."

26. Article 23, paragraph 1 states:

> "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

27. Article 24, paragraph 1 states:

> "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State."

28. The Committee was of the view that the removal by the State party of the authors would, if implemented, entail a violation of articles 17, 23, paragraph 1, and 24, paragraph 1, of the Covenant. The Committee reasoned:

> "It is certainly unobjectionable under the Covenant that a State party may require, under its laws, the departure of persons who remain in its territory beyond limited duration permits. Nor is the fact that a child is born, or that by operation of law such a child receives citizenship either at birth or at a later time, sufficient of itself to make a proposed deportation of one or both parents arbitrary. Accordingly, there is significant scope for States parties to enforce their immigration policy and to require departure of unlawfully present persons. That discretion is, however, not unlimited and may come to be exercised arbitrarily in certain circumstances. In the present case, both authors have been in Australia for over 14 years. The authors' son has grown in Australia from his birth 13 years ago, attending Australian schools as an ordinary child would and developing the social relationships inherent in that. In view of this duration of time, it is incumbent on the State party to demonstrate additional factors justifying the removal of both parents that go beyond a simple enforcement of its immigration law in order to avoid a characterization of arbitrariness. In the particular circumstances, therefore, the Committee considers that the removal by the State party of the authors would constitute, if implemented, arbitrary interference with the family, contrary to article 17, paragraph 1, in conjunction with article 23, of the Covenant in respect of all of the alleged victims, and, additionally, a violation of article 24, paragraph 1, in relation to Barry Winata due to a failure to provide him with the necessary measures of protection as a minor".[48]

**Concluding observations**

29. In 2001 and 2002 the Human Rights Committee also adopted a number of concluding observations and comments regarding the rights of non-citizens under the Covenant.

30. At its seventy-first session, the Committee considered the fourth periodic report of the Dominican Republic.[49] The Committee paid attention to the treatment of Haitians living in that country. Specifically, the Committee expressed its concern "over the failure to protect Haitians living or working in the Dominican Republic from serious human rights abuses such as forced labour and cruel, inhuman or degrading treatment".[50] It also expressed concern "over the living and working conditions of Haitian workers and the tolerated practices that restrict their freedom

of movement".[51] The Committee also mentioned concern at the abuse of the legal notion of "transient aliens" who, according to information possessed by the Committee, "may be born in the Dominican Republic to parents who were also born there but are still not considered to be nationals of the Dominican Republic".[52] The Committee therefore stated that the Dominican Republic "should regulate the situation of everyone living in the country and grant the rights recognized by article 12 [freedom of movement and residence] of the Covenant".[53]

31. At the same session, the Committee examined the initial periodic report of Croatia.[54] In its concluding observations, the Committee, "while welcoming the amendment to article 14 of the Constitution that extended equality to non-citizens", remained "concerned that other provisions continue to restrict certain rights to 'citizens', leaving uncertain whether such rights are guaranteed to all individuals in the territory of the State party and subject to its jurisdiction, as required under article 2, paragraph 1, of the Covenant".[55]

32. In reviewing the second periodic report of the Syrian Arab Republic[56] at the same session, the Committee opined that "the discretionary power of the Minister of the Interior to order the expulsion of any alien, without safeguards, if security and the public interest so require poses problems with regard to article 13 of the Covenant, particularly if the alien entered Syrian territory lawfully and has obtained a residence permit".[57] The Committee requested that "before expelling an alien, the State party should provide him or her with sufficient safeguards and an effective remedy, in conformity with article 13 of the Covenant".[58]

33. At its seventy-second session, the Committee examined the initial periodic report of the Czech Republic.[59] The Committee expressed deep concern "about the persistent allegations of police harassment, particularly of the Roma minority and aliens, which the delegation described as resulting from lack of sensitivity rather than harassment (arts. 2, 7, 9, 26)".[60] The Committee stated that "the State party should take firm measures to eradicate all forms of police harassment of aliens and vulnerable minorities".[61]

34. At the same session the Committee examined the initial periodic report of the Principality of Monaco.[62] The Committee expressed "its concern that no justification is given for the administrative measures relating to the expulsion of foreigners (art. 13 of the Covenant)".[63] The Committee recommended that "the State party should assume the obligation of justifying administrative decisions, particularly those relating to expulsions".[64] The Committee also requested that the State party "transmit within one year, in accordance with rule 70, paragraph 5, of the Committee's rules of procedure, relevant information on the implementation of the Committee's recommendations on the non-justification of administrative measures relating to the expulsion of foreigners".[65]

35. Also at the seventy-second session, the Committee examined the third periodic report of the Netherlands.[66] The Committee welcomed "the recent appointment of an independent National Rapporteur on Trafficking in Persons endowed with appropriate investigative and research powers," but remained concerned "at continuing reports of sexual exploitation of significant numbers of foreign women in the State party (arts. 3, 8, and 26 of the Covenant)".[67]

36. At the same session, in reviewing the second periodic report of the Democratic People's Republic of Korea,[68] the Committee was of the opinion that "the requirement, under the

Immigration Law of the Democratic People's Republic of Korea, of administrative permission to travel abroad, and the requirement, for foreigners in the Democratic People's Republic of Korea, to obtain exit visas to leave the country, are incompatible with the provisions of article 12, paragraph 2, of the Covenant".[69] The Committee recommended that the State party "eliminate the requirement of administrative permission and an exit visa as a general rule and require them only in individual cases that can be justified in the light of the Covenant".[70]

37. At its seventy-third session, the Committee examined the second periodic report of Azerbaijan[71] and found some of its national provisions regarding non-citizens to fall short of its obligations under the Covenant. With regard to the rights of aliens, the Committee considered "that the provisions in the State party's legislation providing for the principle of reciprocity in guaranteeing Covenant rights to aliens are contrary to articles 2 and 26 of the Covenant".[72] The Committee was "equally concerned that according to article 61 of the Constitution, the right to immediate access to legal representation is guaranteed only to citizens".[73] The Committee therefore recommended "that the State party take appropriate measures to guarantee all rights of aliens in accordance with articles 2 and 26 of the Covenant".[74]

38. At the same session the Committee considered the second periodic report of Switzerland.[75] In doing so, it expressed deep concern regarding "reported instances of police brutality towards persons being apprehended and detainees, noting that such persons are frequently aliens"[76] and that "in the course of deportation of aliens there have been instances of degrading treatment and use of excessive force, resulting on some occasions in death of the deportee".[77] The Committee recommended that the State party "ensure that all cases of forcible deportation are carried out in a manner which is compatible with articles 6 and 7 of the Covenant. In particular, it should ensure that restraint methods do not affect the life and physical integrity of persons concerned."[78]

39. Also with respect to the second periodic report of Switzerland, the Committee expressed concern "at the consequences of distinctions made in various pieces of legislation between citizens and non-citizens, the latter forming a considerable segment of the workforce".[79] In particular, the Committee was concerned that "aliens without working papers run the risk of becoming victims of exploitation and abuse".[80] The Committee was also concerned that "another vulnerable category of persons are foreign spouses of foreigners with residence permits, who are subject to deportation in case of discontinuation of de facto cohabitation and, hence, may be forced to live in abusive relationships".[81] The Committee recommended that the State party "review its policies in relation to distinctions between citizens and aliens and between different categories of aliens, in particular in respect of those who do not have papers and spouses of foreigners with residence permits, in order to ensure that the rights of such persons under the Covenant are respected and ensured (arts. 2, 3, 9, 12, 17 and 23)".[82]

40. At the same session, with respect to the review of the fifth periodic report of Ukraine,[83] the Committee expressed concern "about allegations of police harassment, particularly of the Roma minority and aliens".[84] The Committee recommended that the State party "take effective measures to eradicate all forms of police harassment, and set up an independent authority to investigate complaints against the police. It should take steps against those held responsible for such acts of harassment".[85]

## IV. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

41. In 2001, the Committee on Economic, Social and Cultural Rights (CESCR) met for its twenty-fifth session from 23 April to 11 May, its twenty-sixth (extraordinary) session from 13 to 31 August, and its twenty-seventh session from 12 to 30 November. The Committee met for its twenty-eighth session from 29 April to 17 May 2002.

42. The Committee considered a number of periodic reports submitted by States Parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights and issued the following comments and concluding observations regarding the rights of non-citizens under the Covenant.

### Concluding observations

43. At its twenty-fifth session the Committee considered the initial periodic report of China with respect to the Hong Kong Special Administrative Region.[86] The Committee reiterated its concern, first expressed in 1996, about "the denial of the right of foreign domestic helpers upon expiration of their contract to freely seek employment and to protection from discrimination, owing to the 'two-week rule'".[87]

44. At its twenty-sixth (extraordinary) session, the Committee examined the second periodic report of Senegal.[88] The Committee expressed its concern "that foreign workers are still not permitted to hold trade union offices, in spite of the Committee's recommendation to that effect in 1994".[89] The Committee therefore called upon the State party to "to consider repealing the existing provisions of the Labour Code whereby foreign workers are barred from holding trade union offices in Senegal".[90]

45. At the same session, the CESCR considered the additional information submitted by Israel.[91] In doing so, the Committee expressed its continued concern that "the State party's Law of Return denies indigenous Palestinian refugees the right to return to their homes and properties".[92]

46. At its twenty-seventh session, while reviewing the initial periodic report of Croatia,[93] the Committee, "with respect to the right to education, [commended] ... the near achievement of universal and free compulsory primary education, in conformity with article 14 of the Covenant" but expressed its concern regarding "reports that some children from certain minority groups, in particular the Roma and children of undocumented aliens, may not be going to school".[94]

## V. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

47. The Committee on the Elimination of Discrimination against Women (CEDAW) met in 2001 for its twenty-fourth session from 15 January to 2 February, its twenty-fifth session from 2 to 20 July, and its twenty-sixth session from 14 January to 1 February 2002.

48. The Committee considered a number of periodic reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women and issued the following comments and concluding observations regarding the rights of non-citizens under the Convention.

**Concluding observations**

49. At its twenty-fourth session CEDAW considered the fourth and fifth periodic reports of Egypt.[95] The Committee expressed concern "that the Egyptian nationality law prevents an Egyptian woman from passing on her nationality to her children if her husband is not Egyptian, while Egyptian men married to non-Egyptians may do so".[96] It was further concerned "by the hardship faced by the children of Egyptian women married to non-Egyptian men, including financial hardship with regard to education".[97] CEDAW considered "this limitation on the rights of women to be inconsistent with the Convention".[98] The Committee therefore called upon the State party "to revise the legislation governing nationality in order to make it consistent with the provisions of the Convention".[99]

50. At its twenty-fifth session, CEDAW examined the initial and second periodic reports of Singapore.[100] The Committee noted that, while male Singapore citizens could pass on their nationality to children born abroad, female citizens of Singapore could not. The Committee therefore urged the State party to "amend the nationality law so as to eliminate discrimination against women, and withdraw its reservation to article 9" of the Covenant.[101] CEDAW also expressed concern "that foreign domestic workers are prohibited from working during criminal proceedings against their employers, and that this forces such workers to leave Singapore without waiting to receive compensation from them".[102]

51. At the same session, the Committee considered the initial, second, and third periodic reports of Guinea.[103] CEDAW recommended to the State party "that female and male spouses who marry foreigners be treated equally in regulations governing nationality" and urged "the Government to ensure that the concept of *jus sanguinis* is applied to ensure that children of mixed parentage born outside the country can acquire nationality through their Guinean mother".[104]

## VI. COMMITTEE ON THE RIGHTS OF THE CHILD

52. The Committee on the Rights of the Child (CRC) met in 2001 for its twenty-sixth session from 8 to 26 January, its twenty-seventh session from 21 May to 8 June, and its twenty-eighth session from 24 September to 12 October. The Committee also met 14 January to 1 February 2002.

53. During those sessions the CRC made concluding observations and comments on the rights of non-citizen children with regard to several countries, reflecting its mandate to foster implementation of the Convention on the Rights of the Child.

**Concluding observations**

54. At its twenty-sixth session, during its consideration of the initial periodic report of Latvia,[105] the Committee was "concerned that the principle of non-discrimination is not fully implemented for non-citizen children".[106] The CRC therefore recommended "that the general principles of the Convention, in particular the provisions of its articles 2, 3, and 12, be appropriately integrated in all relevant legislation concerning children and applied in all political, judicial and administrative decisions and in projects, programmes and services which have an impact on all children, including non-citizen children, and guide the determination of policy-making at every level and actions taken by social and health welfare institutions, courts of law and administrative authorities".[107]

55. Also with respect to Latvia, the CRC was "deeply concerned that, although all children born in Latvia after 1991 are automatically entitled to citizenship according to the amendment of 1998 of the Citizenship Law, there are still a large number of children who are without Latvian nationality".[108] It further expressed "concern at the slow pace in general of the process of naturalization of non-citizens in Latvia".[109] The Committee therefore recommended, "in light of article 7 of the Convention," that the State party "streamline the process of naturalization for all those who apply for citizenship and, in particular, [and encouraged] the State party to provide more information and support to the parents of non-citizen children to enable them to apply for citizenship on behalf of their children".[110]

56. At the same session, the CRC reviewed the initial periodic report of Liechtenstein.[111] The Committee, "in light of article 2 of the Covenant," recommended that "the State party renew its campaign, held in 1995, against racism, xenophobia and related intolerance with the view ... to preventing prejudices and hostilities towards foreigners among children and adolescents".[112]

57. During the consideration of the second periodic report of Egypt[113] at its twenty-sixth session, the Committee was "concerned at the negative impact on children of restrictions on the right of an Egyptian woman to pass on her nationality to her child, particularly if she is married to a non-national".[114] The CRC therefore recommended "that the State party remove all provisions of the Nationality Law which discriminate against women, and also against children".[115]

58. With respect to the initial periodic report of Lithuania,[116] also considered at its twenty-sixth session, the CRC noted "with concern that children born to stateless persons who have no right of permanent residence in Lithuania do not automatically obtain Lithuanian citizenship".[117] The Committee then, in light of article 7 of the Convention, encouraged the "State party to take all appropriate measures to ensure that all children born in Lithuania are protected from statelessness".[118]

59. At the same session the CRC examined the initial periodic report of Saudi Arabia.[119] The Committee expressed concern "that the nationality law does not grant equal citizenship status to children of Saudi women married to non-nationals".[120] The Committee therefore, in light of article 2 of the Covenant, recommended "that the State party take effective measures, including

enacting or rescinding civil and criminal legislation where necessary, to prevent and eliminate discrimination on the grounds of sex and birth in all fields of civil, economic, political, social and cultural life".[121]

60. Also at the twenty-sixth session the Committee reviewed the initial periodic report of Palau.[122] The CRC "noted with concern that the law regarding intercountry adoptions does not allow the adopting parents to transfer their nationality to non-Palauan adopted children".[123] "Additionally, concern [was] expressed that children in intercountry adoptions are generally not eligible for a Palauan passport; and may not own or inherit land or benefit from health, education and social service subsidies."[124]

61. At its twenty-seventh session, the CRC considered the initial periodic report of Côte d'Ivoire.[125] The Committee, "while noting that discrimination is prohibited under the Constitution" expressed concern "at the persistence of discrimination in the State party", in particular "the occurrence of discrimination against non-citizen children".[126]

62. At the same session, the Committee examined the initial periodic report of Bhutan.[127] The Committee expressed concern "that under citizenship laws, a child of a Bhutanese mother and a non-national father must face a burdensome naturalization process, whereas this is not required if the father is Bhutanese".[128] The Committee therefore recommended that "the State party ensure the right of a child to a nationality without discrimination on the basis of the gender of the parent(s), in accordance with articles 2 and 7 of the Convention".[129]

63. With respect to the initial periodic report of Monaco,[130] reviewed at the same session, the Committee was "concerned that discrimination against women in the passing on of parents' nationality persists" as well as regarding "information indicating that children of all nationalities are not treated equally".[131] The Committee thus recommended "that the State party pursue its efforts to adopt legislation establishing an equal right for men and women to pass on Monegasque nationality to their children" and, "in light of article 12 ... [recommended] further that the State party continue its efforts to ensure that all children, regardless of their nationality, are treated equally".[132]

64. At its twenty-eighth session, the CRC considered the initial periodic report of Oman.[133] The Committee expressed concern "that the Nationality Law does not grant citizenship to children of Omani women married to non-nationals, as it does where the father is Omani".[134] The CRC therefore recommended "that the State party ensure the right of all children to a nationality, without discrimination on the grounds of either parent's sex, in accordance with articles 2 and 7 of the Convention".[135]

65. Similarly, while considering the initial periodic report of Qatar[136] at the same session, the Committee expressed concern "that the 1961 Nationality Act does not grant citizenship to children of Qatari women married to non-nationals, as it does where the father is Qatari".[137] The Committee recommended "that the State party ensure the right of a child to a nationality without discrimination on the basis of either parent's sex, in accordance with articles 2 and 7 of the Convention".[138]

66. At its twenty-ninth session in January 2002, the CRC reviewed the second periodic report of Lebanon.[139] In doing so, the Committee noted with concern that the Government of Lebanon "does not grant equal citizenship status to children of Lebanese women married to non-nationals, as it does where the father is Lebanese" and that this omission "may result in statelessness".[140]

67. The Committee expressed similar concern in the context of refugees and asylum-seekers, particularly with respect to "the absence of legislative or administrative provisions to protect refugee children" including "the fact that only men may confer citizenship to their children, instances of separation of children from their asylum-seeking parents during detention, as well as difficulties regarding full access to education".[141]

## VII. THE INTERNATIONAL COURT OF JUSTICE

68. The International Court of Justice has twice in recent years exercised jurisdiction over a dispute involving the rights of certain non-citizens. At issue in both cases was a provision of the Vienna Convention on Consular Relations that requires States parties to provide certain assistance to detained non-citizens in contacting consular officials of their country of citizenship.

69. Article 36 of the Convention reads in relevant part:

> "1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State: ...
>
> "(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph; ...
>
> "2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended."

70. In the *Case Concerning the Vienna Convention on Consular Relations*,[142] a Paraguayan national, Angel Breard, had been convicted of murder and sentenced to death in the State of Virginia in the United States. Paraguayan authorities first learned of Breard's arrest after his conviction and sentencing. Failing to secure relief in United States courts, the Government of Paraguay brought a case before the International Court of Justice, including a request for provisional measures halting the execution pending the outcome of the suit. The Court granted the request for provisional measures, "given the paramount interest of Paraguay in the life and liberty of its nationals".[143] The Court did not ultimately decide the merits of the case, however, as Paraguay withdrew its complaint after Virginia carried out the execution.

71. In the *LaGrand Case*, two brothers who were German citizens, Karl and Walter LaGrand, had been sentenced to death in the State of Arizona. German authorities did not learn of the convictions until after the trial. As in the *Breard* case, United States authorities conceded that the Vienna Convention had been violated. After unsuccessful attempts to secure relief in United States courts, the German Government filed for relief before the International Court of Justice, including a request for provisional measures requiring the United States to halt the execution of Walter LaGrand. (Karl LaGrand had already been put to death.) Again, the Court granted provisional relief. In its ruling on the merits,[144] the Court held that the Vienna Convention on Consular Relations creates an individual right to certain forms of consular assistance and does not merely regulate the rights and duties of States parties. As a consequence, where the requirements of the Convention are violated, resultant convictions and sentences must in certain circumstances be reviewed.

## VIII. WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

72. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban Conference) met in Durban, South Africa, from 31 August to 8 September 2001. The Durban Conference focused some attention on the rights of non-citizens, in particular refugees, asylum-seekers, and migrants, and the two key documents of the Conference, the Durban Declaration and the Durban Programme of Action,[145] contain extensive references to the situation of non-citizens.

### The Durban Declaration

73. The Durban Declaration states in paragraph 16, with respect to sources, causes, forms, and contemporary manifestations of racism, racial discrimination, xenophobia, and related intolerance:

> "We recognize that xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism and that human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices."

74. Specifically focussing on issues facing and the rights of refugees and asylum-seekers, the Conference:

> "Note[d] with concern that, among other factors, racism, racial discrimination, xenophobia and related intolerance contribute to forced displacement and the movement of people from their countries of origin as refugees and asylum-seekers; (para. 52)
>
> "Recognize[d] with concern that, despite efforts to combat racism, racial discrimination, xenophobia and related intolerance, instances of various forms of racism, racial discrimination, xenophobia and related intolerance against refugees, asylum-seekers and internally displaced persons, among others, continue; (para. 53)

"Underline[d] the urgency of addressing the root causes of displacement and of finding durable solutions for refugees and displaced persons, in particular, voluntary return in safety and dignity to the countries of origin, as well as resettlement in third countries and local integration, when and where appropriate and feasible; (para. 54) [and]

"Affirm[ed its] commitment to respect and implement humanitarian obligations relating to the protection of refugees, asylum-seekers, returnees and internally displaced persons, and note[d] in this regard the importance of international solidarity, burden-sharing and international cooperation to share responsibility for the protection of refugees, [and] reaffirm[ed] that the 1951 Convention relating to the Status of Refugees and its 1967 Protocol remain the foundation of the international refugee regime and recogniz[ed] the importance of their full application by States parties." (para. 55)

75. With paragraph 65 of the Durban Declaration, the international community unequivocally declared its recognition of "the right of refugees to return voluntarily to their homes and properties in dignity and safety, and urge[d] all States to facilitate such return."

76. With respect to refugees specifically, the Durban Declaration reiterated that:

"The international response and policy, including financial assistance, towards refugees and displaced persons in different parts of the world should not be based on discrimination on the grounds of race, colour, descent, or national or ethnic origin of the refugees and displaced persons concerned and, in this context, ... urge[d] the international community to provide adequate assistance on an equitable basis to host countries, in particular to host developing countries and countries in transition." (para. 111)

77. Through the Declaration, the Conference also specifically recognized and expressed concern for the rights of migrants by:

"Call[ing] upon all States to review and, where necessary, revise any immigration policies which are inconsistent with international human rights instruments, with a view to eliminating all discriminatory policies and practices against migrants, including Asians and people of Asian descent; (para. 38)

"Not[ing] with concern and strongly condemn[ing] the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them; reaffirm[ing] the responsibility of States to protect the human rights of migrants under their jurisdiction and reaffirm[ing] the responsibility of

States to safeguard and protect migrants against illegal or violent acts, in particular acts of racial discrimination and crimes perpetrated with racist or xenophobic motivation by individuals or groups; and stress[ing] the need for their fair, just and equitable treatment in society and in the workplace; (para. 48)

"Highlight[ing] the importance of creating conditions conducive to greater harmony, tolerance and respect between migrants and the rest of society in the countries in which they find themselves, in order to eliminate manifestations of racism and xenophobia against migrants [and] underlin[ing] that family reunification has a positive effect on integration and emphasiz[ing] the need for States to facilitate family reunion; (para. 49)

"[Being] mindful of the situation of vulnerability in which migrants frequently find themselves, owing, inter alia, to their departure from their countries of origin and to the difficulties they encounter because of differences in language, customs and culture, as well as economic and social difficulties and obstacles to the return of migrants who are undocumented or in an irregular situation; (para. 50) [and]

"Reaffirm[ing] the necessity of eliminating racial discrimination against migrants, including migrant workers, in relation to issues such as employment, social services, including education and health, as well as access to justice, and that their treatment must be in accordance with international human rights instruments, free from racism, racial discrimination, xenophobia and related intolerance." (para. 51)

78. The Durban Declaration also, in paragraph 89, notes:

"with regret that certain media, by promoting false images and negative stereotypes of vulnerable individuals or groups of individuals, particularly of migrants and refugees, have contributed to the spread of xenophobic and racist sentiments among the public and in some cases have encouraged violence by racist individuals and groups."

**The Durban Programme of Action**

79. Recognizing the many issues in the Durban Declaration that detrimentally affect non-citizens, the Conference agreed to take action to ameliorate such situations.

80. With respect to refugees and asylum-seekers, the Conference:

"Urge[d] States to comply with their obligations under international human rights, refugee and humanitarian law relating to refugees, asylum-seekers and displaced persons, and urge[d] the international community to provide them with protection and assistance in an equitable manner and with due regard to their needs in different parts of the world, in keeping with principles of international solidarity, burden-sharing and international cooperation, to share responsibilities; (para. 34)

"Call[ed] upon States to recognize the racism, racial discrimination, xenophobia and related intolerance that refugees may face as they endeavour to engage in the life of

the societies of their host countries and encourage[d] States, in accordance with their international obligations and commitments, to develop strategies to address this discrimination and to facilitate the full enjoyment of the human rights of refugees. States parties should ensure that all measures relating to refugees must be in full accordance with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; (para. 35) [and]

"Urge[d] States to take effective steps to protect refugee and internally displaced women and girls from violence, to investigate any such violations and to bring those responsible to justice, in collaboration, when appropriate, with the relevant and competent organizations." (para. 36)

81. The Durban Conference also:

"Expresse[d] its deep concern over the severity of the humanitarian suffering of affected civilian populations and the burden carried by many receiving countries, particularly developing countries and countries in transition, and request[ed] the relevant international institutions to ensure that urgent adequate financial and humanitarian assistance is maintained for the host countries to enable them to help the victims and to address, on an equitable basis, difficulties of populations expelled from their homes, and calls for sufficient safeguards to enable refugees to exercise freely their right of return to their countries of origin voluntarily, in safety and dignity." (para. 185)

82. In the Durban Programme of Action, the Conference called for even stronger protections for migrants. For instance, the Conference:

"Request[ed] all States to combat manifestations of a generalized rejection of migrants and actively to discourage all racist demonstrations and acts that generate xenophobic behaviour and negative sentiments towards, or rejection of, migrants; (para. 24)

"Invite[d] international and national non-governmental organizations to include monitoring and protection of the human rights of migrants in their programmes and activities and to sensitize Governments and increase public awareness in all States about the need to prevent racist acts and manifestations of discrimination, xenophobia and related intolerance against migrants; (para. 25)

"Request[ed] States to promote and protect fully and effectively the human rights and fundamental freedoms of all migrants, in conformity with the Universal Declaration of Human Rights and their obligations under international human rights instruments, regardless of the migrants' immigration status; (para. 26)

"Encourage[d] States to promote education on the human rights of migrants and to engage in information campaigns to ensure that the public receives accurate information regarding migrants and migration issues, including the positive contribution of migrants to the host society and the vulnerability of migrants, particularly those who are in an irregular situation; (para. 27)

"Call[ed] upon States to facilitate family reunification in an expeditious and effective manner which has a positive effect on integration of migrants, with due regard for the desire of many family members to have an independent status; (para. 28)

"Urge[d] States to take concrete measures that would eliminate racism, racial discrimination, xenophobia and related intolerance in the workplace against all workers, including migrants, and ensure the full equality of all before the law, including labour law, and further urge[d] States to eliminate barriers, where appropriate, to: participating in vocational training, collective bargaining, employment, contracts and trade union activity; accessing judicial and administrative tribunals dealing with grievances; seeking employment in different parts of their country of residence; and working in safe and healthy conditions; (para. 29)

"Urge[d] States:

"(a) To develop and implement policies and action plans, and to reinforce and implement preventive measures, in order to foster greater harmony and tolerance between migrants and host societies, with the aim of eliminating manifestations of racism, racial discrimination, xenophobia and related intolerance, including acts of violence, perpetrated in many societies by individuals or groups;

"(b) To review and revise, where necessary, their immigration laws, policies and practices so that they are free of racial discrimination and compatible with States' obligations under international human rights instruments;

"(c) To implement specific measures involving the host community and migrants in order to encourage respect for cultural diversity, to promote the fair treatment of migrants and to develop programmes, where appropriate, that facilitate their integration into social, cultural, political and economic life;

"(d) To ensure that migrants, regardless of their immigration status, detained by public authorities are treated with humanity and in a fair manner, and receive effective legal protection and, where appropriate, the assistance of a competent interpreter in accordance with the relevant norms of international law and human rights standards, particularly during interrogation;

"(e) To ensure that the police and immigration authorities treat migrants in a dignified and non-discriminatory manner, in accordance with international standards, through, inter alia, organizing specialized training courses for administrators, police officers, immigration officials and other interested groups;

"(f) To consider the question of promoting the recognition of the educational, professional and technical credentials of migrants, with a view to maximizing their contribution to their new States of residence;

"(g) To take all possible measures to promote the full enjoyment by all migrants of all human rights, including those related to fair wages and equal remuneration for work of equal value without distinction of any kind, and to the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control, social security, including social insurance, access to education, health care, social services and respect for their cultural identity; [and]

"(h) To consider adopting and implementing immigration policies and programmes that would enable immigrants, in particular women and children who are victims of spousal or domestic violence, to free themselves from abusive relationships. (para. 30)

"Urge[d] States, in the light of the increased proportion of women migrants, to place special focus on gender issues, including gender discrimination, particularly when the multiple barriers faced by migrant women intersect; detailed research should be undertaken not only in respect of human rights violations perpetrated against women migrants, but also on the contribution they make to the economies of their countries of origin and their host countries, and the findings should be included in reports to treaty bodies; (para. 31)

"Urge[d] States to recognize the same economic opportunities and responsibilities to documented long-term migrants as to other members of society; (para. 32) [and]

"Recommend[ed] that host countries of migrants consider the provision of adequate social services, in particular in the areas of health, education and adequate housing, as a matter of priority, in cooperation with the United Nations agencies, the regional organizations and international financial bodies; [and] also request[ed] that these agencies provide an adequate response to requests for such services." (para. 33)

83. The Durban Programme of Action also urged:

"States to strengthen the human rights training and awareness-raising activities designed for immigration officials, border police and staff of detention centres and prisons, local authorities and other civil servants in charge of enforcing laws, as well as teachers, with particular attention to the human rights of migrants, refugees and asylum-seekers, in order to prevent acts of racial discrimination and xenophobia and to avoid situations where prejudices lead to decisions based on racism, racial discrimination, xenophobia or related intolerance." (para. 138)

84. Through the Durban Programme of Action, the Conference also urged:

"States and encourages the private sector to promote the development by the media, including the print and electronic media, including the Internet and advertising, taking into account their independence, through their relevant associations and organizations at the national, regional and international levels, of a voluntary ethical code of conduct and self-regulatory measures, and of policies and practices aimed at ...

avoiding stereotyping in all its forms, and particularly the promotion of false images of migrants, including migrant workers, and refugees, in order to prevent the spread of xenophobic sentiments among the public and to encourage the objective and balanced portrayal of people, events and history." (para. 144 (e))

85. Finally, with respect to trafficking in persons, the international community:

"Urge[d] States to enact and implement, as appropriate, laws against trafficking in persons, especially women and children, and smuggling of migrants, taking into account practices that endanger human lives or lead to various kinds of servitude and exploitation, such as debt bondage, slavery, sexual exploitation or labour exploitation; [and] also encourage[d] States to create, if they do not already exist, mechanisms to combat such practices and to allocate adequate resources to ensure law enforcement and the protection of the rights of victims, and to reinforce bilateral, regional and international cooperation, including with non-governmental organizations that assist victims, to combat this trafficking in persons and smuggling of migrants." (para. 69)

## IX. UNHCR'S GLOBAL CONSULTATIONS PROCESS[146]

86. The proliferation of conflicts generating mass flight, refugee-producing situations without resolution, a plethora of concerns besetting host countries coupled with unequal burden-sharing, abuse of the asylum system, and a marked rise in smuggling of people for profit are some issues influencing access and quality of asylum for refugees, a particular group of non-citizens. Against this backdrop, and bearing in mind the fiftieth anniversary of the 1951 Convention relating to the Status of Refugees (1951 Convention), UNHCR launched the process of Global Consultations on International Protection in 2000 to prompt reflection and action to revitalize the 1951 Convention framework. It provided a forum for Governments and other relevant actors to discuss how to address current humanitarian challenges more effectively in a spirit of dialogue and cooperation. This process will be completed in the course of 2002.

### The three tracks of the Global Consultations

87. The Global Consultations were designed along three parallel tracks:

(a) First track: Ministerial Meeting of States Parties;

(b) Second track: expert round tables; and

(c) Third track: policy formulation in the Executive Committee framework.

88. As the "first track" of the Global Consultations, the Government of Switzerland and UNHCR convened a major intergovernmental meeting on 12 and 13 December 2001 to reaffirm the commitment of States parties to full and effective implementation of the 1951 Convention and its 1967 Protocol and encourage additional accessions. The 129 States parties in

attendance unanimously adopted a declaration which recognizes the enduring relevance and importance of the 1951 Convention and its 1967 Protocol, unequivocally reaffirms political commitment to upholding the values and principles they embody, and urges all States to strengthen their implementation. The declaration contains a number of other significant new affirmations, including that the principle of non-refoulement (whereby refugees cannot be returned to the frontiers of territories where their lives or freedoms would be threatened) is embedded in customary international law.

89. The "second track" of the Global Consultations was a series of expert round tables for discussions on specific interpretative aspects of the 1951 Convention and its 1967 Protocol, providing a forum to take stock of developments in refugee law and to examine a number of emerging issues. The process comprised four expert round tables with participants drawn from Governments, NGOs, academia, the judiciary and the legal profession, which discussed issues of particular importance for the provision of refugee protection, namely: cessation, exclusion, non-refoulement, UNHCR's supervisory role, gender-related persecution, membership of a particular social group, internal flight alternative, illegal entry, and family.

90. The "third track" of the Consultations, that is, policy formulation in the Executive Committee framework, has been structured around a number of protection policy matters, including issues not adequately covered by the 1951 Convention. This process has been designed, firstly, to foster a common understanding of the protection challenges and enhance cooperation to address them. Secondly, the process is expected to identify and promote practical responses to protection problems; and thirdly, to lead to the development of new approaches, tools and standards to strengthen protection in areas not adequately covered by the Convention. The discussions have been taking place within the framework of the Executive Committee of UNHCR. A total of three meetings took place in 2001 and one took place from 22 to 24 May 2002. Discussions centred on identifying and developing practical responses around four broad themes: protection of refugees in mass influx situations (March 2001); protection of refugees in the context of individual asylum systems (June and September 2001); the search for protection-based solutions (May 2002); and the protection of refugee women and children (May 2002).

**Agenda for Protection**

91. Deriving from the entire Global Consultations process is a convergence of views on how to enhance refugee protection. To move the process forward, it is envisaged to design a multiyear programme of action - an Agenda for Protection - which contains suggested activities for States, UNHCR, NGOs, and other protection partners identified within the Global Consultations. The Agenda for Protection will guide action in strengthening refugee protection during the years ahead.

## X. INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

92. On 5 February 2002 Ecuador became the nineteenth State party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Article 87 of the Convention provides that the treaty will come into force three months after the twentieth instrument of ratification or accession is deposited with the Secretary-General. It appears likely that the Convention will come into force and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families will be established in the near future.

## XI. SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS

93. In February 2002 the Special Rapporteur on the human rights of migrants, Ms. Gabriela Rodríguez Pizarro, submitted her third annual report to the Commission on Human Rights (E/CN.4/2002/94). The Special Rapporteur identified and briefly discussed several causes of migratory flows. She gave particular attention to trafficking in migrants; other trafficking in persons; the connection between asylum and migration; discrimination against migrants arising since 11 September 2001, the situation of migrant women; and unaccompanied children. The Special Rapporteur transmitted urgent appeals to Saudi Arabia, Bahrain, Indonesia, the Islamic Republic of Iran, Lebanon, Spain, Turkey and the United States of America. She also sent communications through normal channels to Indonesia, Morocco and Spain. In addition, the Special Rapporteur visited Ecuador and after her report went to the Commission she visited the border area between Mexico and the United States.

### Notes

[1] *F.A. v. Norway*, Communication No. 18/2000: Norway, 17 April 2001, document CERD/C/58/D/18/2000 (2000).

[2] Ibid., para. 2.4.

[3] Ibid.

[4] Ibid., para. 7 (a).

[5] Ibid., para. 8.

[6] Concluding observation of the Committee on the Elimination of Racial Discrimination: Iceland, document CERD/C/304/Add.111 (27 April 2001).

[7] Ibid., para. 14.

[8] Ibid.

[9] Concluding observations of the Committee on the Elimination of Racial Discrimination: Japan, document CERD/C/304/Add.114 (27 April 2001).

[10] Ibid., para. 15.

[11] Ibid.

[12] See ibid., para. 16.

[13] Ibid.

[14] Ibid.

[15] Ibid., para. 18.

[16] Ibid.

[17] Concluding observation of the Committee on the Elimination of Racial Discrimination: Germany, document CERD/C/304/Add.115 (27 April 2001).

[18] Ibid., para. 19.

[19] Ibid.

[20] Concluding observation of the Committee on the Elimination of Racial Discrimination: Sudan, document CERD/C/304/Add.116 (27 April 2001).

[21] Ibid., para. 15.

[22] Ibid.

[23] Concluding observations of the Committee on the Elimination of Racial Discrimination China, in document A/56/18, paras. 231-255 (9 August 2001).

[24] Ibid., para. 248.

[25] Concluding observations of the Committee on the Elimination of Racial Discrimination: Cyprus, in document A/56/18, paras. 256-277 (10 August 2001).

[26] Ibid., para. 267.

[27] Concluding observation of the Committee on the Elimination of Racial Discrimination: Egypt, in document A/56/18, paras. 278-297 (15 August 2001).

[28] Ibid., para. 288.

[29] Ibid.

[30] Concluding observations of the Committee on the Elimination of Racial Discrimination: Sri Lanka, in document A/56/18, paras. 321-342 (14 September 2001).

[31] Ibid., para. 334.

[32] Ibid.

[33] Ibid.

[34] Concluding observations of the Committee on the Elimination of Racial Discrimination: Ukraine, in document A/56/18, paras. 360-379 (16 August 2001).

[35] Ibid., para. 374.

[36] Ibid., para. 375.

[37] Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, in document A/56/18, paras. 380-407 (14 August 2001).

[38] Ibid., para. 394.

[39] Ibid.

[40] Ibid.

[41] *Blazek, Hartman and Krizek v. Czech Republic*, communication No. 857/1999: Czech Republic, document CCPR/C/72/D/857/1999 (9 August 2001).

[42] Ibid., para. 7.

[43] Ibid.

[44] Communication No. 516/1992: Czech Republic, document CCPR/C/54/D/516/1992 (31 July 1995).

[45] Communication No. 586/1994: Czech Republic, document CCPR/C/72/D/857/1999 (25 July 1996).

[46] Communication No. 586/1994: Czech Republic, Views of the Human Rights Committee, document CCPR/C/57/D/586/1994, para. 12.6.

[47] *Winata and Lan Li v. Australia*, communication No. 930/2000: Australia, document CCPR/C/72/D/930/2000 (16 August 2001).

[48] Supra note 47, para. 7.3.

[49] Concluding observations of the Human Rights Committee: Dominican Republic, document CCPR/CO/71/DOM (26 April 2001).

[50] Ibid., para. 17.

[51] Ibid.

[52] Ibid., para. 18.

[53] Ibid.

[54] Concluding observations of the Human Rights Committee: Croatia, document CCPR/CO/71/HRV (26 April 2001).

[55] Ibid., para. 18.

[56] Concluding observations of the Human Rights Committee: Syrian Arab Republic, document CCPR/CO/71/SYR (5 April 2001).

[57] Ibid., para. 22.

[58] Ibid.

[59] Concluding observations of the Human Rights Committee: Czech Republic, document CCPR/CO/72/CZE (27 August 2001).

[60] Ibid., para. 15.

[61] Ibid.

[62] Concluding observations of the Human Rights Committee: Monaco, document CCPR/CO/72/MCO (28 August 2001).

[63] Ibid., para. 16.

[64] Ibid.

[65] Ibid., para. 23.

[66] Concluding observations of the Human Rights Committee: Netherlands, document CCPR/CO/72/NET (27 August 2001).

[67] Ibid., para. 10.

[68] Concluding observations of the Human Rights Committee: Democratic People's Republic of Korea, document CCPR/CO/72/PRK (27 August 2001).

[69] Ibid., para. 20.

[70] Ibid.

[71] Concluding observations of the Human Rights Committee: Azerbaijan, document CCPR/CO/73/AZE (12 November 2001).

[72] Ibid., para. 20.

[73] Ibid.

[74] Ibid.

[75] Concluding observations of the Human Rights Committee: Switzerland, document CCPR/CO/73/CH (5 November 2001).

[76] Ibid., para. 11.

[77] Ibid., para. 13.

[78] Ibid.

[79] Ibid., para. 15.

[80] Ibid.

[81] Ibid.

[82] Ibid.

[83] Concluding observations of the Human Rights Committee: Ukraine, document CCPR/CO/73/UKR (5 November 2001).

[84] Ibid., para. 13.

[85] Ibid.

[86] Concluding observations of the Committee on Economic, Social and Cultural Rights (Hong Kong): China, document E/C.12/1/Add.58 (21 May 2001).

[87] Ibid., para. 15 (f). For an explanation of the "two-week rule" see paragraph 12 above.

[88] Concluding observations of the Committee on Economic, Social and Cultural Rights: Senegal, document E/C.12/1/Add.62 (24 September 2001).

[89] Ibid., para. 22.

[90] Ibid., para. 44.

[91] Concluding observations of the Committee on Economic, Social and Cultural Rights: Israel, document E/C.12/1/Add.69 (31 August 2001).

[92] Ibid., para. 14.

[93] Concluding observations of the Committee on Economic, Social and Cultural Rights: Croatia, document E/C.12/1/Add.73 (30 November 2001).

[94] Ibid., para. 14.

[95] Concluding observations of the Committee on the Elimination of Discrimination against Women: Egypt, in document A/56/38, paras. 312-358 (2 February 2001).

[96] Ibid., para. 330.

[97] Ibid.

[98] Ibid.

[99] Ibid., para. 331.

[100] Concluding observations of the Committee on the Elimination of Discrimination against Women: Singapore, in document A/56/38, paras. 54-96 (31 July 2001).

[101] Ibid., para. 75.

[102] Ibid., para. 81.

[103] Concluding observations of the Committee on the Elimination of Discrimination against Women: Guinea, in document A/56/38, paras. 97-144 (31 July 2001).

[104] Ibid., para. 125.

[105] Concluding observations of the Committee on the Rights of the Child: Latvia, document CRC/C/15/Add.142 (26 January 2001).

[106] Ibid., para. 23.

[107] Ibid., para. 22.

[108] Ibid., para. 25.

[109] Ibid.

[110] Ibid., para. 26.

[111] Concluding observations of the Committee on the Rights of the Child: Liechtenstein, document CRC/C/15/Add.143 (26 January 2001).

[112] Ibid., para. 21.

[113] Concluding observations of the Committee on the Rights of the Child: Egypt, document CRC/C/15/Add.145 (26 January 2001).

[114] Ibid., para. 29 (b).

[115] Ibid., para. 30.

[116] Concluding observations of the Committee on the Rights of the Child: Lithuania, document CRC/C/15/Add.146 (26 January 2001).

[117] Ibid., para. 23.

[118] Ibid., para. 24.

[119] Concluding observations of the Committee on the Rights of the Child: Saudi Arabia, document CRC/C/15/Add.148 (26 January 2001).

[120] Ibid., para. 23.

[121] Ibid., para. 24.

[122] Concluding observations of the Committee on the Rights of the Child: Palau, document CRC/C/15/Add.149 (21 February 2001).

[123] Ibid., para. 40.

[124] Ibid.

[125] Concluding observations of the Committee on the Rights of the Child: Côte d'Ivoire, document CRC/C/15/Add.155 (9 July 2001).

[126] Ibid., para. 22.

[127] Concluding observations of the Committee on the Rights of the Child: Bhutan, document CRC/C/15/Add.157 (9 July 2001).

[128] Ibid., para. 36.

[129] Ibid., para. 37.

[130] Concluding observations of the Committee on the Rights of the Child: Monaco, document CRC/C/15/Add.158 (8 June 2001).

[131] Ibid., para. 20.

[132] Ibid., para. 21.

[133] Concluding observations of the Committee on the Rights of the Child: Oman, document CRC/C/15/Add.161 (6 November 2001).

[134] Ibid., para. 33.

[135] Ibid., para. 34.

[136] Concluding observations of the Committee on the Rights of the Child: Qatar, document CRC/C/15/Add.163 (6 November 2001).

[137] Ibid., para. 41.

[138] Ibid., para. 42.

[139] Concluding observations of the Committee on the Rights of the Child: Lebanon, document CRC/C/15/Add.169 (1 February 2002).

[140] Ibid., para. 32.

[141] Ibid., para. 52.

[142] *Case concerning the Vienna Convention on Consular Relations (Paraguay v. The United States of America), Order of 9 April 1988 - Request for the Indication of Provisional Measures, I.C.J. Report 1998.*

[143] Ibid., para. 8

[144] *LaGrand Case (Germany v. The United States of America), Judgment of 27 June 2001, I.C.J. Reports 2001.*

[145] Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa, 31 August - 8 September 2001 (A/CONF.189/12), chap. I.

[146] More information on the Global Consultations on International Protection is available on UNHCR's public web site (www.unhcr.ch - Global Consultations - Documents).

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**PREVENTION OF DISCRIMINATION**

**The rights of non-citizens**

# Progress report of the Special Rapporteur, Mr. David Weissbrodt, submitted in accordance with Sub-Commission decisions 2000/103 and 2001/108, as well as Commission decision 2002/107

**Addendum**

**Regional activities**

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## I. INTRODUCTION

1. This addendum (E/CN.4/Sub.2/2002/25/Add.2) to the progress report of the Special Rapporteur on the rights of non-citizens (E/CN.4/Sub.2/2002/25) supplements the 2001 addendum (E/CN.4/Sub.2/2001/20/Add.1) to the preliminary report of the Special Rapporteur (E/CN.4/Sub.2/2001/20) by providing an expanded examination of the rights of non-citizens within regional human rights bodies. The addendum thereby supplements the jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights that was examined briefly in the 2001 report. The addendum also includes new material on the jurisprudence of the African Commission on Human and Peoples' Rights with regard to the rights of non-citizens and discusses the Framework Convention on National Minorities, adopted under the auspices of the Council of Europe.

## II. JURISPRUDENCE OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

2. The African Commission on Human and Peoples' Rights (African Commission) has considered the rights of non-citizens under a number of articles of the African [Banjul] Charter on Human and Peoples' Rights (Banjul Charter), including in particular articles 7, 12, 14, and 18. With respect to non-citizens, many of the specific articles interpreted by the African Commission have been read in conjunction with the non-discrimination clause of article 2, which states:

> "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."

### A. Articles 7 and 12

3. Several cases decided by the African Commission with regard to non-citizens involved alleged violations of article 7 and article 12.

4. Article 7 protects a number of components of the right to a fair trial, stating that:

> "1. Every individual shall have the right to have his cause heard. This comprises:
>
> "(a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
>
> "(b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
>
> "(c) the right to defence, including the right to be defended by counsel of his choice;

"(d) the right to be tried within a reasonable time by an impartial court or tribunal.

"2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender."

5. Article 12 states that:

"(1) Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

"(2) Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.

"(3) Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.

"(4) A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.

"(5) The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups."

6. In October 1996, the African Commission decided *Organisation mondiale contre la torture v. Rwanda*,[1] which involved the expulsion from Rwanda of Burundian nationals who had been refugees in Rwanda for several years. Prior to their expulsion, the complainants were not allowed to defend themselves before a competent court.[2] The Commission found that the complainants were arrested, detained and expelled based on grounds of ethnic origin alone.[3]

7. By expelling the complainants without giving them the opportunity to be heard by the national judicial authorities, the Commission held that the Government of Rwanda had violated article 7 (1) of the Banjul Charter.[4]

8. Furthermore, the Commission stated that article 12 "should be read as including a general protection of all those who are subject to persecution, that they may seek refuge in another State".[5] The Commission therefore held the Government of Rwanda had violated article 12 (4) prohibiting the arbitrary expulsion of such persons from the country of asylum.[6] Additionally, the mass expulsion of the complainants based on their nationality constituted a violation of article 12 (5).[7]

9. In October 1997, the African Commission considered a similar case in *Rencontre africaine pour la défense des droits de l'homme v. Zambia*,[8] involving a situation where the Government of Zambia expelled 517 West Africans on 26 and 27 February 1992 on the grounds that they were in Zambia unlawfully.[9]

10. In considering this case, the Commission stated that article 12 "imposes an obligation on the contracting States to secure the rights protected in the Charter to all persons within their jurisdiction, nationals and non-nationals".[10]

11. Because the deportees had been denied access to the Zambian courts to challenge their detention or deportation, the Government of Zambia had violated article 7 of the Banjul Charter.[11] Additionally, because the deportees were expelled based on nationality, the Government had violated article 12 (5).[12]

12. On 11 November 1997, the African Commission decided *Fédération internationale des Ligues des droits de l'homme v. Angola*,[13] which involved the expulsion of West African nationals from Angola in 1996.[14]

13. The Commission noted that African States in general, and the Republic of Angola in particular, are faced with many economic challenges and that States often resort to measures aimed at protecting their nationals and their economies from non-nationals. The Commission noted, however, that such measures should not be taken to the detriment of the enjoyment of human rights and that mass expulsions of any category of persons, whether on the basis of nationality, religion, ethnic, racial, or other considerations constitute a violation of human rights.[15]

14. Because the deportees were not allowed to challenge their expulsion, the Commission held that the Government of Angola had violated articles 7 and 12 (4). Additionally, because they had been expelled based on their nationality, the Commission found a violation of article 12 (5).

15. *Amnesty International v. Zambia*[16] involved the deportation of William Steven Banda and John Luson Chinula, both of whom had resided in Zambia for many years.

16. Mr. Banda unsuccessfully challenged his deportation in the Zambian courts, but was denied access to the administrative proceedings that should have been available to him under the Citizenship Act.[17] The African Commission found that the Government of Zambia had therefore violated articles 7 and 12 (4) of the Charter.[18]

17. Mr. Chinula was not allowed to challenge his deportation and was forcibly deported.[19] When Mr. Chinula sought to return to Zambia in order to challenge his expulsion he was threatened with imprisonment.[20] The African Commission found a violation of article 7.[21]

### B. Article 14

18. Article 14 of the Banjul Charter sets forth:

> "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."

19. *Fédération internationale des Ligues des droits de l'homme v. Angola* also involved a violation of article 14, because the Commission found that the expulsion of the West Africans resulted in some of them losing the property they owned in Angola.[22]

### C. Article 18

20. Article 18 of the Banjul Charter states:

> "1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
>
> "2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
>
> "3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
>
> "4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs."

21. *Fédération internationale des Ligues des droits de l'homme v. Angola* also involved a violation of article 18, because the Commission found that the expulsion of the West Africans resulted in the separation of some of the deportees from their families.[23]

22. *Amnesty International v. Zambia*, discussed above, also resulted in Mr. Banda and Mr. Chinula being separated from their families, and hence the Commission found a violation of article 18 (1) and (2).[24]

## III. JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

23. The European Court of Human Rights has considered the rights of non-citizens under a number of articles to the European Convention on Human Rights including in particular articles 3, 5, 6, 8, 14 and 16.

### A. Article 3

24. Article 3 states:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

25. In a series of cases, including *Vilvarajah and Others v. United Kingdom*,[25] *Chahal v. United Kingdom*,[26] and *Ahmed v. Austria*,[27] the European Court has held that to expel or deport a non-citizen with a well-founded fear of persecution within the terms of the 1951 Convention relating to the Status of Refugees would amount to a violation of article 3 because the petitioner would, if expelled or deported, be subjected to treatment prohibited by that article.

26. On 6 March 2001, the European Court again considered the situation of a person facing expulsion and alleging a well-founded fear of persecution in the receiving State. In *Hilal v. United Kingdom*,[28] the petitioner alleged he had a well-founded fear of persecution in the United Republic of Tanzania on account of his political opinion and membership in an opposition political party. Based on human rights reports, the Court found that the petitioner would face a serious risk of being subjected to torture or inhuman and degrading treatment if returned to Tanzania and thus his expulsion, if carried out, would constitute a violation by the United Kingdom of article 3 of the European Convention.

27. The European Court has also considered whether deportation to a country where needed medical treatment is unavailable violates article 3. *D. v. United Kingdom*[29] involved an applicant in the advanced stages of AIDS who had been receiving health treatment necessary for his survival. The applicant faced deportation to St. Kitts because of a criminal conviction. The Court noted that the applicant was in the "advanced stages of a terminable and incurable illness", that the respondent State had "assumed responsibility for treating the applicant's condition since August 1994", that the applicant had "become reliant on the medical and palliative care which he [was] receiving", and that the "abrupt withdrawal of these facilities will entail the most dramatic consequences for him".[30] The Court therefore held that, "in view of these exceptional circumstances and bearing in mind the critical stage now reached in the applicant's fatal illness, the implementation of the decision to remove him to St. Kitts would amount to inhuman treatment by the respondent State in violation of article 3".[31] The Court emphasized "that aliens who have served their prison sentences and are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State during their stay in prison", but that "in the very exceptional circumstances of this case and given the compelling humanitarian considerations at stake, it must be concluded that the implementation of the decision to remove the applicant would be a violation of article 3".[32]

28. The case of *Bensaid v. United Kingdom*,[33] however, involved an applicant who was "a schizophrenic suffering from a psychotic illness". The applicant argued that if removed to Algeria he would not have access to the medical treatment necessary to prevent a relapse of his

condition. The Court noted that the medical treatment available in the United Kingdom was superior to that available in Algeria and accepted "the seriousness of the applicant's medical condition".[34] The Court, however, "having regard ... to the high threshold set by article 3, particularly where the case does not concern the direct responsibility of the Contracting State for the infliction of harm [did] not find that there [was] a sufficiently real risk that the applicant's removal in these circumstances would be contrary to the standards of article 3 [and that] it [did] not disclose the exceptional circumstances of the case of *D. v. United Kingdom*".[35]

## B. Article 5

29. Article 5 (1) (f) states:

> "(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> > (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

30. The European Court considered article 5 (1) (f) of the European Convention in the case of *Amuur v. France*[36] in 1996. *Amuur* involved four Somali nationals who fled Somalia via Kenya and the Syrian Arab Republic and arrived at Orly Airport in Paris on 9 March 1992. Upon arrival, the petitioners were refused entry because their travel documents were not in order. French immigration authorities then transferred the four petitioners to a nearby hotel that was used for holding persons denied entry to the country and which was legally considered an "international zone" rather than French territory. The petitioners sought to apply for asylum from the hotel but were not allowed legal or social assistance. On 29 March the four were deported to Syria. Two days later, the Creteil Tribunal de grande instance of Creteil found that the detention of the applicants was unlawful and ordered their release, although they had already been returned to Syria.

31. The European Court considered a number of factors in determining whether the detention constituted a restriction upon liberty or a deprivation of liberty as defined in article 5 (1) of the European Convention. The Court noted that the difference between a lawful and an unlawful restriction upon liberty was a matter of degree and that factors to be examined included the type, duration, effects, and manner of implementation of the measure in question. The Court stated that the "international zone" was a legal fiction and, despite its name, did not have extraterritorial status and that any "prolongation [of the detention] requires speedy review by the courts".[37] Of particular weight in the Court's deliberation was the fact that the petitioners were unable to access the procedures, including legal assistance, necessary to pursue their asylum applications. Furthermore, neither the length nor the necessity of the confinement was viewed by a court until 26 March 1992. For these reasons, the European Court found a breach of article 5 (1) (f) of the Convention.

## C. Article 6

32. Article 6 states:

"(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

"(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

"(3) Everyone charged with a criminal offence has the following minimum rights:

"(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

"(b) to have adequate time and facilities for the preparation of his defence;

"(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

"(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

"(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

33. Regarding article 6, the European Court has held, most recently in *Maaouia v. France*,[38] that the right to the fair trial protections of article 6 does not apply to decisions regarding the entry, stay, or deportation of aliens, as these decisions do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of article 6 (1) of the Convention. The Court reasoned that, "by adopting article 1 of Protocol No. 7 containing guarantees specifically concerning proceedings for the expulsion of aliens ... States clearly intimated their intention not to include such proceedings within the scope of article 6, paragraph 1, of the Convention."[39]

34. Article 1 of Protocol No. 7 to the European Convention on Human Rights states:

"1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

"(a) to submit reasons against his expulsion,

"(b) to have his case reviewed, and

"(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority. An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security."

35. In a subsequent admissibility decision,[40] the Court applied the rule of *Maaouia* to a proceeding in which a criminal sentence of expulsion was challenged. The applicant had claimed that his conviction and expulsion sentence had been obtained in a manner that violated provisions of article 6. The Court reasoned:

"The domestic legal order's characterization of a penalty cannot, by itself, be decisive for determining whether or not the penalty is criminal in nature. Other factors, notably the nature of the penalty concerned, have to be taken into account. In general, exclusion orders are not characterized as criminal within the member States of the Council of Europe. Such orders, which in most States may also be made by the administrative authorities, constitute a special preventive measure for the purposes of immigration control and do not concern the determination of a criminal charge against the applicant for the purposes of article 6 paragraph 1, of the Convention. The fact that they are imposed in the context of criminal proceedings cannot alter their essentially preventive nature."[41]

### D. Article 8

36. Article 8 states:

"(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

"(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

37. The following cases, also contained in the 2001 addendum, reflect the European Court's article 8 jurisprudence. For additional article 8 cases please refer to the 2001 addendum (E/CN.4/Sub.2/2001/20/Add.1), paragraphs 119 to 133.[42]

38. The seminal judgement regarding article 8 occurred on 21 June 1988 in *Berrehab v. the Netherlands*.[43] In *Berrehab*, the Court defined the effect of article 8 on the deportation of non-citizens. The substance of the decision was that where the non-citizen has real family ties in the territory of the State from which he is ordered deported, and the deportation measure is such as to jeopardize the maintenance of those ties, the deportation is justified with regard to article 8 if it is proportionate to the legitimate aim pursued. In other words, the deportation is justified only if the interference with family life is not excessive with respect to the public interest to be protected. The public interest often balanced against the right to respect for family life is the State's interest in maintaining public order and arises in the context of non-citizens convicted of criminal offences.

39. *Berrehab v. the Netherlands*, however, did not involve a criminal conviction. Mr. Berrehab, a citizen of Morocco, was married to a Dutch citizen and received residency status on that basis. Mr. Berrehab and his spouse later divorced in 1979. Mr. Berrehab, however, had one daughter by the marriage and after the divorce was appointed as his daughter's auxiliary guardian and granted frequent and regular visitation with his daughter.

40. In 1983 Mr. Berrehab's residency permit was not renewed on account of the divorce and he was subsequently arrested and ordered deported. The Court, applying the balancing test presented above, found that the deportation order violated article 8 of the Convention.

41. In 1991 the European Court of Human Rights considered the case of *Beldjoudi v. France*[44] in which both the person sought to be deported and his spouse, who possessed French citizenship, challenged the deportation on the grounds that it would violate article 8. Mr. Beldjoudi was born in France, but he was considered an Algerian citizen. In the late 1960s and 1970s he was convicted of a number of criminal offences including assault and battery, theft, aggravated theft, driving a vehicle without a licence and possession of weapons. These convictions led to a deportation order being issued in 1979. The Court considered a number of factors favourable to Mr. Beldjoudi, including that he was born in France and had had French nationality until 1 January 1963. He was deemed to have lost that nationality when he was still a juvenile because his parents neglected to reaffirm their French nationality pursuant to the Evian Agreements of 19 March 1962. The Evian Agreements of 19 March 1962 provided that persons born in Algeria while it was a French department, and thereby acquiring French citizenship, were deemed to have relinquished that citizenship if they did not make a declaration recognizing French nationality before 27 March 1967. Upon reaching adulthood he tried to re-establish his French nationality. He had served in the French military, he was married to a French citizen, and his close relatives had resided in France for several decades. Upon consideration of these factors the Court held that the deportation order was not proportionate to the legitimate aim pursued and therefore violated both Mr. Beldjoudi's and his spouse's rights under article 8.

42. On 26 September 1997, the European Court issued rulings in two cases with somewhat similar factual situations. The cases, *Mehemi v. France*[45] and *El Boujaïdi v. France*,[46] involved Algerian and Moroccan citizens, respectively. At the time of consideration of the first case, Mr. Mehemi was living in Algeria after being deported from France on 28 February 1995. The respondent State issued an exclusion order barring Mr. Mehemi from returning to French territory. His parents remained in France, where they had resided for approximately 40 years, as did four siblings, two of whom were French citizens. Mr. Mehemi had attended French schools

until the age of 17 and was married to an Italian national with whom he subsequently had three children of French nationality. On 22 January 1991 Mr. Mehemi was convicted of a drug offence and ordered deported to Algeria. The European Court found that Mr. Mehemi was completely integrated into French society and had no links to Algeria other than citizenship. It held that although the deportation was a form of interference that was "in accordance with the law" and had a legitimate aim, namely the prevention of disorder or crime, the interference was not "necessary in a democratic society" because it was not justified by a pressing social need nor was it proportionate to the legitimate aim pursued. The Court thus found a violation of article 8 of the Convention.

43. In the second case decided on 26 September 1997, Mr. El Boujaïdi had been convicted of a drug offence in 1988. French authorities deported Mr. El Boujaïdi to Morocco and excluded him from returning to France, where he had lived since 1974. The Court articulated its task with respect to article 8 jurisprudence as consisting of "ascertaining whether the measure in issue struck a fair balance between the relevant interests, namely the applicant's right to respect for his private and family life, on the one hand, and the prevention of disorder or crime, on the other."[47] The European Court found that Mr. El Boujaïdi had a previous conviction from a drug offence for which he was incarcerated for a time, after which he continued to be involved in criminal activity while living in France unlawfully. This fact alone, in the Court's view, weighed heavily against the petitioner. Additionally, the Court also found that he had links to Morocco beyond simply having Moroccan nationality. The Court therefore distinguished *El Boujaïdi* from *Mehemi* because the former did have some ties to the country to which he was to be expelled, including being able to speak Arabic and having family and friends in Morocco. Applying the balancing test between the interference with article 8 (1) rights vis-à-vis the State's interests, the Court concluded that Mr. El Boujaïdi posed a greater threat to the respondent State's interests in public safety and prevention of disorder or crime than did Mr. Mehemi. The Court, having found that the enforcement of the exclusion order was not disproportionate to the State's legitimate aims, concluded there had been no violation of article 8 with respect to the expulsion of Mr. El Boujaïdi.

44. Also in 1997, the Court issued a ruling in the case of *Boujlifa v. France*.[48] The applicant was a Moroccan national who entered France to join his father at the age of five. When he was 20 the applicant committed several crimes. After serving prison sentences following two convictions for robbery, the applicant was extradited to Switzerland where he served a further sentence for theft. Upon his release from a Swiss prison in 1988 he returned to France to live with his parents. In early 1990 he was informed that deportation proceedings had been initiated against him as a result of his earlier robbery convictions.

45. In assessing the proportionality of the deportation order, the Court observed that the applicant had received all of his schooling in France and that his entire family resided there. The Court noted, however, that the applicant had not sought to acquire French nationality when he became eligible to do so. In view of the seriousness of the applicant's offences, the Court found that the deportation was not disproportionate to the legitimate aim of preventing crime and public disorder.

46. In *Dalia v. France*,[49] the Court considered an expulsion order imposed on an Algerian woman residing in France. Aïcha Dalia had arrived in France in 1977 or 1978 at the

age of 17 or 18 to join the rest of her family. In 1986 she was convicted of dealing in heroin and a permanent exclusion order was imposed. After spending nearly a year in Algeria, the applicant returned to France in July 1989 with a visa valid for 30 days. Following expiration of the visa, she remained in France. In 1990 she gave birth to a baby with French nationality.

47. In weighing the permanent exclusion order the Court considered several facts. First, the Court noted that the applicant had lived in Algeria until the age of 17 or 18, for two years without her parents, and had maintained family relations there. Second, she spoke the local language and had established social and school relationships in the country. Therefore, the Court observed, "her Algerian nationality is not merely a legal fact but reflects certain social and emotional links. In short, the interference in issue was not so drastic as that which may result from the expulsion of applicants who were born in the host country or first went there as young children."[50] As for the applicant's French child, the Court noted that "the applicant formed this vital family link when she was in France illegally. She could not be unaware of the resulting insecurity."[51] Finally, the Court observed that the exclusion order was the result of a conviction for "dangerous dealing in heroin" and that "[i]n view of the devastating effects of drugs on people's lives, the Court understands why the authorities show great firmness with regard to those who actively contribute to the spread of this scourge."[52] In light of all of these factors, the Court found that there had been no violation of article 8.

48. In *Baghli v. France*,[53] the Court considered the case of an Algerian national challenging an exclusion order imposed by French authorities. The applicant had entered France in 1967 at the age of two and had remained there except for a two-year period of mandatory military service in Algeria. Following a drug trafficking conviction in 1991 he received a 10-year exclusion order barring him from French territory.

49. In assessing the proportionality of the exclusion order, the Court observed that although the applicant's parents and siblings all resided in France, he did not maintain close ties with them. Moreover, the applicant had preserved ties with Algeria, having several times travelled to the country on holiday. The Court further noted the seriousness of the offence underlying the exclusion order. In view of all of these circumstances, the Court found the order proportionate to the legitimate aim of preventing crime and public disorder and accordingly rejected the applicant's claim

50. In *Ciliz v. the Netherlands*,[54] the European Court considered the case of a Turkish citizen residing in the respondent State. The petitioner was originally allowed to reside in the Netherlands on account of being married to a Dutch citizen. The couple subsequently had a child. Upon the dissolution of the petitioner's marriage, he was given up to one year to seek employment. After not finding employment in that time, the respondent State rejected his request for an extension of his residence permit. The petitioner challenged the rejection on the ground that it would force him to leave the Netherlands and thereby sever his contact with his son, which he alleged would violate article 8 of the Convention.

51. The European Court, having in mind its previous jurisprudence, noted that the bond which existed between a parent and child fell within the meaning of article 8 (1) and that such a relationship was not terminated by reason of the fact that the parents separate or divorce, and as a result the child ceases to live with the parent in question. Hence, the Court concluded that,

although the respondent State's action was aimed at the preservation of the economic well-being of the country and thus served a legitimate aim within the meaning of article 8 (2), that the interference with the petitioner's rights under article 8 was not necessary in a democratic society and therefore constitutes a breach of article 8.

52. In *Ezzouhdi v. France*,[55] the Court considered the case of a Moroccan national who had lived in France since the age of five. Following a conviction for a drug-related offence, French authorities imposed an exclusion order on the applicant requiring him to leave France permanently. The applicant's family resided in France, where he had been educated and employed. Noting his family ties in France, that his conviction was for the personal use of drugs, and that none of his prior convictions indicated he posed a serious threat to the public, the Court unanimously found that the exclusion order imposed on Ezzouhdi violated article 8.

## E. Article 14

53. Article 14 states:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

54. With respect to article 14, the European Court considered the case of *Darby v. Sweden*.[56] In *Darby* the Court held that a Swedish law that denied non-citizens the right to claim exemption from a church-tax violated article 14, when taken together with article 1 of Protocol No. 1 (the right to peaceful enjoyment of one's possessions).

55. Similarly, in *Gaygusuz v. Austria*,[57] the Court held that Austria's refusal to grant emergency economic assistance to a legal resident alien on the basis of his non-citizen status violated article 14, when taken together with article 1 of Protocol No. 1.

## F. Article 16

56. Article 16 states:

> " Nothing in articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens."

Articles 10, 11 and 14 guarantee freedom of expression, freedom of assembly and association, and freedom from discrimination in the enjoyment of Convention rights respectively.

57. The European Court first considered the content of article 16 in *Piermont v. France*,[58] decided in 1995. The applicant, a German national and member of the European Parliament visited French Polynesia in 1986. While there, she participated in a demonstration in favour of political independence and opposed to French nuclear testing in the South Pacific. The applicant spoke at the rally and labelled French presence in the territories an "interference in the affairs of

the Polynesians." Shortly thereafter she was served with an expulsion order. The applicant complained, inter alia, that her expulsion violated the freedom of expression guaranteed under article 10 of the European Convention. In defending the expulsion, the French Government invoked article 16 of the European Convention. The European Court rejected that argument, explaining simply that "... Mrs. Piermont's possession of the nationality of a member State of the European Union and, in addition to that, her status as a member of the European Parliament do not allow article 16 of the Convention to be raised against her, especially as the people of the [Overseas Territories] take part in the European Parliament elections."[59]

## IV. EUROPEAN FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

58. The European Framework Convention for the Protection of National Minorities was adopted by the Council of Europe on 1 February 1995 and entered into force on 2 January 1998. The Framework Convention does not define the term "national minorities" because the member States of the Council of Europe failed to agree on any such definition.[60]

59. The *travaux préparatoires* provide little guidance, as the Governments expressed varying views on the definition generally.

### A. Framework Convention interpretation

60. The rules of treaty interpretation provided by the Vienna Convention of the Law of Treaties offer some guidance, however, and the application of those rules leads to the conclusion that the Framework Convention does apply to non-citizens.

61. First, the Framework Convention is silent as to its scope vis-à-vis non-citizens. Its express terms do not include or exclude non-citizens from its protections.

62. Second, the express wording and ordinary meaning of the provisions of the Framework Convention refer to "persons" or "every person" belonging to a national minority. As the Framework Convention is a human rights instrument, the terms "persons" and "every persons" should be interpreted to mean every human being without discrimination.

### B. Application of the Framework Convention

63. General practice also indicates that the Framework Convention does apply to non-citizens. For instance, several States parties provided interpretive declarations with their respective instruments of ratification that expressly stated that the State party would not apply the Convention to non-citizens. Such interpretive declarations, essentially reservations, indicate that in the absence of such declarations the States parties interpret the Framework Convention as applying to non-citizens.

64. The Advisory Committee and the Committee of Ministers, established as responsible bodies under the Framework Convention to supervise it implementation, have both offered views indicating that the Convention applies to non-citizens.

65. In its Opinion on Croatia, the Advisory Committee welcomed the inclusive interpretation of the Framework Convention by the Government of Croatia, but stated further that it was "of the opinion that it would also be possible to consider the inclusion of persons belonging to additional groups, including non-citizens[,] as appropriate, in the application of the Framework Convention on an article-by-article basis".[61]

66. Similarly, in its Opinion on the Czech Republic adopted on the same day, the Advisory Committee expressed the opinion that "it would be possible to consider the inclusion of ... non-citizens[,] as appropriate, in the application of the Framework Convention on an article-by-article basis".[62] The Advisory Committee reiterated this position in its Opinion on Romania[63] and Opinion on Cyprus.[64]

67. The Council of Ministers, in its respective resolutions on the Advisory Committee opinions on the Croatia,[65] Cyprus,[66] and the Czech Republic[67] recommended to the respective States that they "take appropriate account of the . . . various comments in the Advisory Committee's opinion[s]".

## V. JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

68. In October 1999, the Inter-American Court of Human Rights issued an advisory opinion in the matter of *The Right to Information on Consular Assistance in the Framework of Guarantees of the Due Process of Law*.[68] The Government of Mexico requested the Advisory Opinion after a Mexican national, Mario Murphy, had been executed in the State of Virginia. Virginia authorities carried out the execution despite clear evidence that Mr. Murphy had never been informed of his right to consular assistance under the Vienna Convention on Consular Relations. After concluding that the right to consular assistance under the Vienna Convention is a human right, the Court ruled that a non-citizen detained in a State party to the Convention must be informed immediately of his right to consular assistance and that any failure to observe the requirements of the Vienna Convention in a death penalty case constitutes an arbitrary deprivation of life.

### Notes

[1] *Organisation mondiale contre la torture v. Rwanda*, African Comm. Hum. & Peoples' Rights, Comm. No. 27/89, 46/91, 99/93 (October 1996).

[2] Ibid., para. 1.

[3] Ibid., para. 28.

[4] Ibid., para. 34.

[5] Ibid., para. 30.

[6] Ibid.

[7] Ibid., para. 32.

[8] *Rencontre africaine pour la défense des droits de l'homme v. Zambia*, African Comm. Hum. & Peoples' Rights, Comm. No. 71/92 (October 1997).

[9] Ibid., para. 1.

[10] Ibid., para. 22.

[11] Ibid., para. 30.

[12] Ibid., *Decides*.

[13] *Fédération internationale des Ligues des droits de l'homme v. Angola*, African Comm. Hum. & Peoples' Rights, Comm. No. 159/96 (11 November 1997).

[14] Ibid., para. 1.

[15] Ibid., para. 16.

[16] *Amnesty International v. Zambia*, African Comm. Hum. & Peoples' Rights, Comm. No. 212/98 (5 May 1999).

[17] Ibid., paras. 7 and 44.

[18] Ibid., para. 44.

[19] Ibid., para. 7.

[20] Ibid., para. 11.

[21] Ibid., para. 46.

[22] *Fédération internationale des Ligues des droits de l'homme v. Angola*, op. cit., para. 17.

[23] Ibid.

[24] *Amnesty International v. Zambia*, op. cit., para. 59.

[25] 215 Eur. Ct. H.R. (Ser. A) (1991).

[26] 23 EHRR 413 (1997).

[27] 24 EHRR 278 (1997).

[28] 33 EHRR (2001).

[29] 24 EHRR 423 (1997).

[30] Ibid.

[31] Ibid.

[32] Ibid., para. 54.

[33] 33 EHRR (2001).

[34] Ibid., para. 40.

[35] Ibid.

[36] 22 EHRR 533 (1996).

[37] Ibid., para. 43.

[38] 33 EHRR 42 (2001)

[39] Ibid, para. 37.

[40] *Lakatos v. Czech Republic*, Application No. 42052/98 (23 October 2001).

[41] Ibid.

[42] The 2001 addendum (E/CN.4/Sub.2/2001/20/Add.1) contains summaries of the following cases: *C. v. Belgium, Bouchelkia v. France, Moustaquim v. Belgium, Nasri v. France, Purtonen v. Finland* and *S.N. v. the Netherlands*.

[43] 138 Eur. Ct. H.R. (Ser. A) (1988).

[44] 234 Eur. Ct. H.R. (Ser. A) (1992).

[45] 30 EHRR 739 (1997).

[46] 30 EHRR 223 (1997).

[47] Ibid., para. 40.

[48] Application No. 25404/94, Eur. Ct. H.R. (21 October 1997).

[49] Application No. 26102/95, Eur. Ct. H.R. (19 February 1998).

[50] Ibid., para. 53.

[51] Ibid.

[52] Ibid.

[53] 33 EHRR 32 (2001).

[54] Application No. 29192/95, Eur. Ct. H.R. (11 July 2000) (not yet published).

[55] Application No. 47160/99, Eur. Ct. H.R. (13 February 2001) (not yet published).

[56] 187 Eur. Ct. H.R. (Ser. A) (1990)

[57] 23 EHRR 364 (1996).

[58] 314 Eur. Ct. H.R. (Ser.A) (1995).

[59] Ibid. at para. 64

[60] The Explanatory Report to the Framework Convention observes that the drafters "decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States" (para. 12). Available at http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/Explanatory%20report/explreport.htm

[61] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Croatia, adopted on 6 April 2001.

[62] Ibid., Opinion on the Czech Republic, adopted on 6 April 2001.

[63] Ibid., Opinion on Romania, adopted on 6 April 2001.

[64] Ibid., Opinion on Cyprus, adopted on 6 April 2001.

[65] Council of Europe, Council of Ministers, ResCMN(2002)1 on the implementation of the Framework Convention for the Protection of National Minorities by Croatia.

[66] Ibid., ResCMN(2002)3 on the implementation of the Framework Convention for the Protection of National Minorities by Cyprus.

[67] Ibid., ResCMN(2002)2 on the implementation of the Framework Convention for the Protection of National Minorities by the Czech Republic.

[68] Advisory Opinion OC-16/99 (1 October 1999).

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# PREVENTION OF DISCRIMINATION

## The rights of non-citizens

## Progress report of the Special Rapporteur, Mr. David Weissbrodt, submitted in accordance with Sub-Commission decisions 2000/103 and 2001/108, as well as Commission decision 2002/107

## Addendum

## Examples of practices in regard to non-citizens

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## I. INTRODUCTION

1. This addendum (E/CN.4/Sub.2/2002/25/Add.3) to the progress report of the Special Rapporteur on the rights of non-citizens (E/CN.4/Sub.2/2002/25) contains media and NGO reports that provide examples of State practices in regard to non-citizens.

2. The materials included in this addendum were compiled by searching various newspaper and wire service databases, Westlaw's Major World Newspapers, Major Papers, and Major Magazines databases; Lexis's INTNEWS database; CONTENTSFIRST, Political Science Abstracts, SCAD, Minority Rights Group International materials, Ethnic News Watch, World Reporter, World News Connection (FBIS), Japan Today web site, and the *New York Times* archives. A general World Wide Web search was also conducted. Each of these databases contains solely English-language publications that serve a general interest readership. A large number of search terms were used, alone and in various combinations. These terms included: foreigner, national, alien, non-native, non-domestic, migrant, newcomer, asylum-seeker, refugee, immigrant, non-citizen, banished, expelled, exiled, and imprisoned alien.

3. While the main progress report (E/CN.4/Sub.2/2002/25) summarizes the norms that protect the rights of non-citizens, in many countries non-citizens do not actually enjoy those rights. Many of the most difficult problems relate to undocumented individuals whose very existence may not be recognized by the State.[1] They may be homeless or live in irregular and/or often changeable locations under substandard conditions. Undocumented migrants may be subject to identification checks, raids upon their homes and workplaces, and interrogations in which they may suffer abuse, excessive use of force, inhumane or degrading treatment, physical and psychological abuse, and violation of the right to privacy. Their encounters with the police may not be noticed because they have no relatives to raise questions about their detention or even death. Even when they suffer human rights violations, they may not seek judicial remedies because they fear deportation. Without documentation they often cannot obtain basic government services, including health care and in some cases education. If they can find work, they are often employed in the informal economy in which their employers exploit their fear of being reported to the authorities and may subject them to slavery-like conditions. If the irregular migrants are employed as domestic servants, they may be subjected to sexual and other physical abuse. Employers often do not keep records of their wages or their hours. Few, if any, official records are kept and media reports do not reflect the realities they face. Accordingly, the problems of these undocumented individuals are generally not presented in this report. Indeed, although Governments may find some of the reports unflattering, that the situations are reported reflects that attention is being paid to the problems facing non-citizens. At least in these situations the media, and often the Government, are attending to the problems. Where there are no reports, there may be even worse problems and greater indifference.

4. Another extremely vulnerable group of non-citizens are irregular migrants. The United Nations Special Rapporteur on the human rights of migrants has begun to report on their situation.[2] When non-citizens leave their countries for migration they can either travel through irregular or regular channels. When using irregular channels migrants take enormous risks by putting their lives in the hands of smuggling and trafficking networks. For example, smugglers may use unsafe means of transportation that jeopardize the lives of the migrants. Migrants may

die by suffocation in closed containers or by drowning when an overloaded ship sinks. In some cases State officials may be aware of or even involved in the smuggling efforts. When migrants travel in these conditions they are often intercepted by State agents who use their power to return or detain migrants or, in some cases, to extort bribes from them. There have been cases in which sexual favours have been demanded of undocumented women migrants in order to let them continue on their way; cases of rape have also been reported in some countries. Having been intercepted, migrants are also vulnerable to excessive use of force by security forces as well as mental and physical abuse, particularly due to racist or xenophobic attitudes. Irregular migrants are subject to degrading body searches. Migrants also report confiscation and theft of documents, money and belongings. When interception leads to detention many countries lack appropriate facilities and migrants are often detained with convicted criminals. Detained migrants may lack access to the courts because their detention is considered administrative and thus means of judicial review is not available. Detention may also be indefinite because it may take several months or far longer to identify the individuals and ascertain their nationality. The country of origin may be unwilling to recognize the individuals as their nationals or to produce travel documents. Even if the country of origin acknowledges their nationals in detention, many migrants are imprisoned in places where there is no consular representation of their country of origin, therefore consular protection may not be available. Where there is a consular office effective protection may depend on the country of origin's policies and willingness to act on behalf of their nationals. In addition, many countries have penal codes that make it a serious criminal offence (for example, 1 to 5 years' imprisonment) to enter a country with or to possess false documents. Some migrants are accused of being traffickers or smugglers, although they may only be the victims of those offences. When migrants are involuntarily deported, they may be subjected to excessive use of force, use of drugs, and degrading treatment.

5. Because of methodological constraints - linguistic and otherwise - it is not possible to present in this addendum a comprehensive, representative, timely, or even fully reliable account of the problems facing non-citizens around the world. Nonetheless, members of the Sub-Commission asked the Special Rapporteur to present some examples of the situations facing non-citizens, so as to assess whether the principles of international human rights law set forth in the progress report are being respected in practice and to determine whether further norms and procedures are required. The materials collected below are offered as a very tentative effort to respond to those requests in the hope that Governments, non-governmental organizations and all other readers will be encouraged to provide updates and corrections on the situations discussed below, so that greater accuracy can be achieved in the Special Rapporteur's final report in 2003. The paragraphs and/or the cited sources indicate the dates of the situations identified. Hence, the paragraphs below should be considered a snapshot of the situation as of those dates and as reported by the media. It is recognized that media reports are not always accurate and it is very likely that updates and contextual information would provide a greater understanding of the situations. Because the Special Rapporteur principally consulted English-language media, many of the reports come from English-speaking countries. It should not be inferred that problems of non-citizens are somehow concentrated in those English-speaking countries. Rather, the Special Rapporteur needs to consult media and other sources representing other languages and other countries. Governments, non-governmental organizations and others are encouraged to bring to the attention of the Special Rapporteur further situations, so as to provide a more representative sample of the problems facing non-citizens.

## II. FREEDOM FROM CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

6. World News Connection reported in July 2001 that the European Commission against Racism and Intolerance (ECRI) found that excessive force by the police against aliens who enter or stay in Cyprus illegally is a matter of serious concern. Cyprus has responded by setting up a ministerial committee to submit recommendations aimed at improving the situation.[3]

7. An assault on three illegal immigrants by police, captured on videotape, has highlighted the brutal treatment of foreigners in South Africa. Over 14,000 of 128,000 police on the South African force are facing criminal prosecution for their excessive brutality.[4]

8. Malaysia is host to about 700,000 legal foreign workers, most of whom are Indonesians and Bangladeshis. Officials estimate that there are 250,000 illegal foreign workers in the country, though others say the actual figure could be much higher.[5] A former illegal immigrant from Bangladesh gave disturbing testimony in a Malaysian courtroom about alleged torture and sexual abuse five years ago at a detention camp for illegal immigrants.[6] He testified that 120 detainees were allegedly ordered to perform sex acts on each other as about half a dozen police personnel watched and that detainees were forced to eat grass and spend extended periods of time in cells covered with faeces.

9. Human Rights Watch (HRW) has reported that more than 60 per cent of illegal or undocumented immigrants detained by the United States Immigration and Naturalization Service (INS) were housed in local jails where conditions and treatment of inmates fell short of international standards. In many cases, immigrants, including asylum-seekers, were kept with convicted criminals in these facilities and sometimes had been subjected to physical abuse and ill-treatment, HRW said in an 84-page report called "Locked Away". The INS Commissioner during the Clinton Administration stressed in a statement that her agency was "deeply committed to providing a safe, secure and humane environment for all detainees, regardless of where they are being held". Many are arrested at their port of entry into the United States for improper documentation, while others have been picked up by the United States Border Patrol or by INS agents after raids on workplaces. Still others have been convicted for felony crimes in the United States and are awaiting deportation to their homelands as required by United States law. There were about 16,000 INS detainees scattered around the country, only 40 per cent of whom are being held in INS holding facilities. The rest are transferred to local jails or privately owned facilities used by local jurisdictions.

10. Of these, almost 60 per cent face deportation for criminal offences, and another 35 per cent or more were picked up for lack of documentation. The report's author, Jennifer Bailey, said she estimated the percentage of asylum-seekers to be between 5 and 7 per cent. The INS itself does not differentiate between asylum-seekers and other non-criminal immigrants in detention.[7]

11. Starting in April 1999, the FBI was investigating serious allegations of beatings, verbal abuse and other violations of the civil rights of asylum-seekers at the federal Elizabeth Detention Center in the United States. Four years earlier there was a riot in the detention centre over

inhumane treatment of the detainees. The Justice Department called in the FBI after reports that guards beat a Palestinian stowaway so badly that he required stitches and that two officers kicked and shoved a Nigerian college student. Immigration officials have asked investigators to look into a possible cover-up that may include the withholding of information and tampering with videotapes of the incidents. The allegations triggered a dramatic shake-up, the chief of security was removed, two supervisors and six officers were barred from going near detainees, and a guard was fired for refusing to cooperate with an internal investigation into the charges and the warden in charge of the centre during the investigated incidents resigned. INS officials were very concerned about all the reported cases of mistreatment and took steps to help alleviate the problems including increasing the number of INS officers in the centre from one to seven, and by having the centre install more video and other monitoring equipment. Detention critics still say that these measures are not enough and that the Government should only hold asylum-seekers as a last resort. Many detainees in the centre stay from 90 days to over two years in the jail-like centre while their cases are processed.[8]

12. Australian Immigration Minister Philip Ruddock has ordered a probe into the treatment of illegal aliens. The Australian Broadcasting Corporation's "Four Corners" claimed on 13 March 2000, that illegal immigrants had been repeatedly injected against their will with sedatives. This practice reportedly occurred as the aliens were being deported. "Four Corners" also told of a pregnant woman complaining to Immigration officials for a fortnight about pain and bleeding. When finally admitted to hospital, she was found to have miscarried. A spokesman for Ruddock confirmed that a departmental investigation had started into the programme's content.[9]

13. In September 1999, Mozambican nationals reported cases of murder, intimidation and assault at the hands of South African policemen at the Mozambican Consulate in Johannesburg. Carlo Bila, chairperson of the Mozambican community organization in Bekkersdal township on the West Rand, said he had received complaints of illegal immigrants dying during arrest operations, with some being assaulted, robbed and thrown off trains while being deported. Antonio Tauzene, a consular official, confirmed that the Consulate had received reports about brutal treatment of illegal immigrants, but believed most cases went unreported.[10]

14. In early March 2000, the South African Human Rights Commission (SAHRC) said it was "reasonably satisfied" with the conditions in which illegal immigrants were being detained at the Lindela transit camp near Krugersdorp on the West Rand, but it was still concerned about allegations of human rights abuses by police officers.[11]

15. South African Human Rights Commission (SAHRC) commissioner Jody Kollapen, together with SAHRC Chairman Barney Pityana and other commissioners, visited the camp to monitor the conditions and investigate allegations of irregularities relating to arrests. "We are seriously concerned about the large number of immigrants who were arrested and then released. It is a violation of rights to be detained even though they have legal documents", said Kollapen. As a result of the unwarranted arrests, Pityana said Lindela's inadequate facilities (it has a maximum capacity of 2,000) could not cope with the influx of more than 3,000 detainees. Pityana said there was a thin line between legitimate police action against illegal immigrants and the treatment of asylum-seekers who were not afforded the rights they deserve.[12]

16. Watchdog groups in Japan have submitted a report to the Human Rights Committee established pursuant to the International Covenant on Civil and Political Rights that points out the growing number of cases in which foreigners have allegedly been subjected to abuse, including violence, while in custody. The report includes five instances of suspected abuse of foreign detainees in prison, detention houses and immigration holding facilities between 1994 and 1998. Activists hope the report will trigger improvements in Japan's detention system.[13]

17. Cardinal Thomas Winning made an impassioned plea for fair treatment for refugees and asylum-seekers just days before his death. Writing in *The Herald* one week before his first heart attack, the cardinal said the intolerance and prejudice shown towards some refugees in Glasgow, Scotland, had come close to making him ashamed of his home city. He said: "The face of our city has been disfigured by brutal acts of aggression against people whose only crime is to flee persecution and seek refuge in a foreign country. As archbishop of Glasgow, I feel duty bound to denounce the violence, intimidation, and bullying of asylum-seekers in our midst. More importantly, as a human being, I feel utterly dismayed to think that such activities can be happening a few miles from our revitalized city centre."

18. Cardinal Winning said the Church also condemned the "institutionalized discrimination" suffered by asylum-seekers. "Despite the problems, I remain hopeful", he said. "My hope is Glasgow can overcome this distasteful and shameful blip on the path to a more caring society."[14]

19. In the 13 months since Glasgow stretched out its arms to asylum-seekers there have been 70 reported racist incidents in the Sighthill area where 2,000 are housed. Two Palestinian brothers were attacked by a mob in April 2001. "There is a barbaric regime in Afghanistan", Mohammad Asif said. "I left my country to save my life and I come here and end up in another barbaric place." Home Secretary Jack Straw announced new measures to speed up the removal of unsuccessful asylum-seekers from Britain after admitting that the Government had failed to meet its target of deporting 12,000 people who were refused refugee status last year. Although only 9,000 were sent back, Straw unveiled a raft of fresh proposals to tackle the year's target of 30,000 including the increased use of charter planes and the introduction of mobile fingerprint units to check on potential absconders. The Scottish Refugee Council has a different view of the situation. It says that it is appalled by the growing number of racist attacks on asylum-seekers and believes the number of reported cases to be "just the tip of the iceberg". Many asylum-seekers, the organization says, are experiencing discrimination and abuse on a daily basis. In Sighthill, a place blighted by alcoholism, drug addiction, crime, unemployment and boredom, this is the grim reality for many of the 2,000 Kurds, Iraqis, Afghans and others already there. Norrie Fowler has lived in Sighthill for eight years. He puts the blame of the troubles squarely at the door of Glasgow City Council. "They have let down the residents and they have let down the asylum-seekers", he says. "Right from the very beginning they got it wrong, they haven't educated or kept any of the local population informed. The first time that people knew that asylum-seekers were coming here was when they read it in the press."[15]

20. The latest Scottish police figures, which cover the nine-month period from April 2000 to January 2001, show there have been 67 reported incidents involving attacks or abuse against asylum-seekers, and the figures are continuing to rise. A total of 98 people have been identified as responsible, of whom 50 were under 16 years of age, 34 were aged 16-21 and 11 were aged 22 to 30, with only three older than 30.[16]

## III. FREEDOM FROM ARBITRARY DETENTION

21. The SAHRC says that police and Home Affairs Department officials are not only detaining aliens illegally but also seem to be targeting and discriminating against specific South African tribes, especially Vendas, Pedis and Shangaans from the Northern Province.[17]

22. A study conducted at the Lindela repatriation centre in Randfontein, South Africa, found that people were being detained on suspicion of being aliens simply because of the colour of their skins and their accents. Of 149 persons interviewed, 10 per cent were released because they were either South African citizens or legal residents, 15 per cent possessed valid identity documents, 30 per cent were not given a chance to prove their status, 20 per cent had been assaulted and 75 per cent were not informed of their right to make a phone call. The study also found numerous cases of other types of ill-treatment. In light of this study the Commission has called for the application of clear constitutional guidelines for the arrest of people suspected of being illegal immigrants.[18] The SAHRC has reported that hatred for foreigners has resulted in the deaths of 30 refugees and asylum-seekers. Non-citizen residents also reportedly suffer extortion, arbitrary arrest and general violent individual attacks.[19]

23. In 1996, xenophobic sentiment in the United States Congress produced laws giving the Government more authority in detaining and deporting non-citizens without judicial review. Some of the starkest examples of this trend involved anti-terrorism cases in which the federal Government has sought to deport illegal immigrants based on classified evidence that neither the defendants, their lawyers, nor even judges could review in full. While helping to write the regulations for implementing the tough new laws at the INS, Professor David Martin of the University of Virginia Law School said that he had tried to keep one principle in mind: the constitutional guarantee not to "deprive" anyone of due process. "The question is how do you figure out the balance between protecting the interests of the United States and the interests of the individual", he said.[20]

## IV. FREEDOM OF MOVEMENT

24. The Czech Human Rights Council, a governmental body, has asked the Government to make amendments to the new laws on entry and stay of foreigners in the Czech Republic. Human Rights Commissioner Petr Uhl said that the Council has found that border police are not respecting treaties on the prevention of double taxation and agreements on rights of children. The Council has also recommended that the Government reassess its visa policies and the effectiveness of requiring citizens of certain countries to fill out entry forms.[21]

25. Following several years of feuding between the Czech Republic and former Soviet Republics over immigration practices, Prague has said it will introduce visa requirements for visitors from Russia, Ukraine and Belarus. The Czech decision was announced on 2 February 2000.[22]

26. The adoption of a new rule requiring non-citizens to carry an "A-Card" has created much controversy in Austria. This card, which is supposedly meant to be a tuberculosis check of foreign children and a special identity card for foreigners except EU citizens and tourists, is said to be a new way to continue old forms of racism in Austria.[23]

27. Some Zambian policy makers are calling for a tightening of immigration laws to control the massive flow of refugees and immigrants in recent years. Zambia has traditionally had a very open policy in regard to non-citizens' settlement within its borders.

28. In February 2000, the British Home Office announced it would impose bonds on some visitors from the Indian subcontinent. Visitors suspected of intending to immigrate will have to put up a bond of $A 40,000 prior to entering the country. The bond will only be returned if the person leaves the country on or before their official departure date, or if there were "exceptional medical circumstances" surrounding the overstay.[24]

## V. DISCRIMINATION AND OTHER PROBLEMS IN THE ISSUANCE OF VISAS AND RESIDENCE PERMITS

29. On 22 August 2001, British immigration officers were given permission by the Czech Government to resume the controversial practice of screening Britain-bound flights for asylum-seekers at Prague airport. The Home Office had abandoned the pre-clearance immigration control system in July 2001 after it provoked an outcry in the Czech Republic.[25]

30. The Czech Republic plans to adopt stricter work rules and visa requirements for non-citizens while also substantially strengthening the Alien and Border Police. Deputy Interior Minister Jaroslav Kopriva has requested 120 new border police and 60 more Alien and Border Police officers in addition to the 1,300 new officers the Alien and Border Police have hired within the last year. In 1998 police set a new all-time high by catching 44,672 illegal immigrants.[26]

31. Some Canadian immigration lawyers, social workers and politicians say that Canada should create amnesty programmes for the over 200,000 illegal immigrants present there. Canada already accepts more immigrants per capita than any other Western nation. In 2000, more than 226,000 legitimate immigrants were allowed into Canada. Some critics say that an amnesty would only encourage more illegal immigrants to come to Canada while others state that immigrants are an invaluable asset to the national economy.[27]

32. An amendment to the Japanese Alien Registration Law recently abolished a fingerprint requirement to which all non-citizens had been subject. The revision of the law relieved about 600,000 residents from having to register their fingerprints. Instead, they will be asked to file their signatures or the names of their family members. Although the fingerprint law has been repealed, foreigners are still required to carry their alien registration cards at all times and violators face heavy penalties including incarceration for up to three years or fines of up to 300,000 yen. This requirement has been widely condemned abroad.[28] Some local communities have responded by creating local autonomy laws, which allow non-citizens more rights, for example, allowing non-citizens to serve in local governmental positions and to vote in local elections.[29]

## VI. RIGHT TO WORK

33. China's Vice-Premier, Li Lanqing, said in a meeting with representatives of chambers of commerce that the Government is giving serious consideration to extending the existing time limits for the extension of visas of foreign workers. The representatives, including those of 16 foreign chambers of commerce in Hong Kong, had suggested that the current six-month limit on visa extensions is too short; it would be better for the Chinese Government to extend the period to three to five years. They also requested whether foreigners with permanent resident status in Hong Kong could enter the mainland without visas, requiring only the same document as was required for permanent residents of Hong Kong.[30]

34. Officials from the Ministry of Labour estimate that there are some 290,000 foreign workers in the Republic of Korea, 195,000 of whom are thought to be working illegally. Of these, over 50 per cent were from China, while Bangladeshis (8 per cent), Mongolians (7 per cent), Filipinos (6.7 per cent), and Thais (6.6 per cent) account for the majority of the remainder. The Korean media have focused mainly on "Western-looking" foreigners, perhaps adding to the perception that all foreigners working in Korea are successful and earning a great deal of money. However, the reality for most foreign workers is very different. "The working conditions for most migrant workers are very poor", says Father Kim Eunkyu of the International Workers Counselling Office in Goyang City. "Many of them are subject to verbal abuse, violence and racism and most Koreans look down on them." The counselling office was established last year with the goal of providing medical care to, and promoting basic human rights of foreign workers in Korea, many of whom are working illegally. The Government's Industrial Trainee System, a programme aimed at enticing foreign labour into "3D" (difficult, dangerous and dirty) jobs, has been roundly criticized by civic groups for making it easier for migrant workers' rights to be abused by unscrupulous businessmen. Cramped living conditions, intimidating workplace environments and low salaries (which are often withheld) often await the migrant worker who enters the country on the trainee system, with recent figures suggesting that at least 30 per cent of the foreign workforce participate in traineeships. With the results of a Korea Labour Institute survey indicating that an incredible 85 per cent of those entering the country as trainees abscond from their positions in search of better treatment, the nation's growing illegal worker problem seems destined to continue.[31]

35. In New Zealand, discrimination is stopping talented non-citizens from getting jobs, an Equal Employment Opportunities Trust study shows. The study, published on 16 November 1999, shows that even when they do get work, non-citizens are not always treated fairly. Trudie McNaughton, Executive Director of the Trust, said that talent was being wasted. A Trust survey of Sri Lankan migrants found that despite 96 per cent being qualified, 75 per cent having professional experience before moving to New Zealand and 92 per cent being fluent in English, more than half had taken up lower positions than they had previously held and almost half were discriminated against during their job search and afterward. Employers were the group most likely to discriminate, followed by recruitment consultants.[32]

36. Foreign nationals who do not have a residence permit in the Czech Republic are allowed to work for a maximum of three years in a row as of 1 October 1999. After this period expires, they must wait for a minimum of 12 months for the issuance of a new work permit. This law

does not apply to foreigners from EU member States, the United States, Canada, Australia and Japan. This law also does not apply to citizens of neighbouring States who return at least once a week to the place of their permanent residence and maintain the following jobs: seasonal workers, interns, teachers, university staff, family members of diplomats, members of rescue teams and accredited media representatives.[33]

37. Starting in early 1998 the Government of Indonesia was taking steps to protect the rights of women and other migrant workers overseas. The Government's efforts included a computerized system to monitor the mobility of women overseas and an intensification of their training. Problems commonly faced by those workers included bad treatment by employers, including violent conduct and rape; lack of understanding of sociocultural norms in the receiving countries; and lack of command of the language.[34]

38. Four hundred and fifty of the 1,500 non-citizen foreign language lecturers in Italy are claiming that they have been maltreated by Italian university authorities for up to 18 years. These foreign lecturers and professors are claiming that they receive inferior contracts and are subject to racial discrimination, financial exploitation, psychological harassment and general intimidation. There are many cases currently pending in court.[35]

39. It has been reported that female domestic workers in Saudi Arabia suffer from discrimination as foreign nationals and as women. They are excluded from the protections afforded to other workers by the Labour Code. As a result, they are frequently overworked and rarely given time off and are often locked in the homes of their employers. Their isolation makes them even more vulnerable to assaults which will not be witnessed by anyone outside the family of their employers, as well as being an easy target for false allegations.[36]

## VII. THE TREATMENT OF REFUGEES AND ASYLUM-SEEKERS

40. In June 2000 a group of asylum-seekers in Glasgow, Scotland, complained that a building run by the YMCA was worse than a detention centre and petitioned the Scottish parliament for better treatment. The group cited inadequate food, lack of safety, and a rule that banned them from receiving guests as their main complaints. Positive Action in Housing, the Glasgow ethnic minorities housing agency, backed the group's action. Director Robina Qureshi believes the ban on asylum-seekers from bringing friends back is "blatantly discriminatory".[37]

41. Jobless asylum-seekers, who have recently been allowed to seek work in Ireland, are facing the threat of having their State benefit cut unless they prove they are genuinely looking for a job. However, unlike Irish nationals or people with refugee status, asylum-seekers are not entitled to training or State-funded language classes to help them prepare to join the labour force. Some 2,000 asylum-seekers who are currently eligible to work are being told they must supply documentary evidence that they are "genuinely seeking" a job.[38]

42. The Asylum Rights Alliance (ARA) started a campaign in 1998 to get the Irish Government to allow asylum-seekers to work in Ireland while their applications were being processed. The campaign was endorsed by more than 100 organizations, including the Irish Congress of Trade Unions and the National Organization of the Unemployed. The Government was accused by ARA of forcing asylum-seekers into a dependency culture.[39]

43. In April 2000, more than 400 individual lawyers, trade union members and refugee group members united to fight the Irish Government's policy of "direct provision" and dispersion of asylum-seekers. Under direct provision, asylum-seekers get full board accommodation and an allowance of 15 pounds a week instead of the regular living allowance of 72 pounds and rent allowance. In addition, large numbers of asylum-seekers have been dispersed to different parts of the State because of the shortage of accommodation in Dublin.[40]

44. A study conducted in September 2000 by the Department of Social, Community and Family Affairs in the United Kingdom said that of 3,536 asylum-seekers eligible to work, half are no longer claiming social welfare payments. Of the remainder, 646 are on supplementary welfare, which means they are either not available or do not want to work. Only 953, about one in four, are still on unemployment assistance.[41]

45. Assisting Chechen refugees and protecting their rights are the major aims of the newly established Committee of Chechen Refugees in Azerbaijan, said Firudin Abbasov, head of the Committee. He said that the Committee intended to obtain refugee status for the estimated 7,000 Chechens living in Azerbaijan. Not having this status, Chechens cannot get international humanitarian aid. They have not received any assistance over the past three or four months and are in "a catastrophic situation". Moreover, Chechens were subject to harassment by the police who demanded bribes.[42]

## VIII. FREEDOM FROM ARBITRARY EXPULSION AND DEPORTATION

46. Thousands of legal permanent residents are facing the prospect of deportation as a result of changes in the Anti-Terrorism Act and Effective Death Penalty Act and the Illegal Immigrant Reform Act and Immigrant Responsibility Act enacted by the United States Congress in 1996. Nicholas DeMarzio, chair of the U.S. Catholic Conference on Migration, said that the new rules "undermine basic human dignity and human rights, unnecessarily separate and divide families, violate fundamental notions of fairness and equal protection under the law and create an artificial 'crisis' in [the ability of the INS to detain] truly violent or dangerous individuals". Under terms of this legislation, any crime committed by a legal permanent resident that earns a sentence of one year or more is classified as an aggravated felony, making the permanent resident eligible for deportation.[43]

47. The Czech Republic's Interior Minister, Vaclav Grulich, announced a plan for the removal of unwanted non-citizens. The proposal calls for sending Ukrainians and other foreigners who reside illegally in the Czech Republic back to their countries in sealed trains under police escort. "The trains will start rolling once the competent ministries work out the details of the new plan", said Interior Ministry spokeswoman Marie Masarikova, adding that the plan "should be implemented during the course of 2000". Any forced removal of illegal aliens would appear to be sanctioned under the tough new foreigners' law, which makes it much harder for "problem country" nationals, such as Ukrainians and Russians, to enter the country. Under the new law, passed in part to meet European Union standards, they must now provide photographs, proof of health insurance, proof of accommodation and funds for their stay to cross Czech borders. The new rules have created massive border delays. Human rights officials criticized Grulich's plan and branded the new foreigners' law as discriminatory. "The new

repressive measures will only send these people deeper into the arms of the Mafia", said Dana Nemcova, a caseworker for refugee services for the Czech Helsinki Committee, a humanitarian organization.[44]

48. In November 1999, soldiers rounded up and trucked 240 Haitians out of the Dominican Republic in a deportation that Haitians called an illegal response to recent international criticism of the Dominican treatment of Haitian immigrants. Tensions over Haitian immigration to the Dominican Republic have been high since the Organization of American States (OAS) issued a report on 30 October 1999, charging that the Dominican Republic had violated human rights by not granting citizenship to children born in the Dominican Republic if their parents are illegal Haitian immigrants.[45]

## IX. RIGHT TO ENTER ONE'S OWN COUNTRY

49. On 15 June 1988 the Greek Parliament was expected to repeal a controversial law which stripped non-ethnic Greeks of their citizenship. The Parliament voted to abolish the infamous article 19 of the Greek citizenship law, which was used as a means of revoking the citizenship of members of the 150,000-strong Turkish minority in Greece's Western Thrace region. It stipulated that Greek citizens not of Greek extraction who leave Greece with the intention of permanently settling abroad, or whom the Greek authorities decide left with such an intention, should be stripped of Greek citizenship. The European Union and human rights organizations were putting pressure on the Government to change the law. Under the 43-year-old article, some 7,000 Turks have been stripped of their citizenship over the last 15 years. All of them had made a trip to Turkey.[46]

## X. RIGHT TO OWN PROPERTY

50. Hungary currently maintains a law which bars foreign nationals or businesses from buying land.[47]

51. Steven Herman, a United States citizen, filed a damage suit against the Asahi Bank in Japan claiming that the bank's refusal to extend him a housing loan on grounds that he is a foreign national without permanent residence status in Japan is unconstitutional. He claimed that his dignity was undermined because he was denied the loan due to his race and nationality.[48]

52. A new law in Kazakhstan significantly restricts private land ownership. Private individuals may own plots for family farming, gardening or building country homes. This right does not apply to foreigners or non-citizens.[49]

53. New Zealand's 1973 Overseas Investment Act has been amended so that future applications for foreign investment in farmland would only be approved where it would result in "substantial and identifiable benefits" to New Zealand, said New Zealand's Treasurer, Winston Peters. "The Government also intends to give favourable treatment to overseas buyers of farmland who hold permanent resident status", he said. Amendments to the law also reduced the area of shore land, the sale of which requires Overseas Investment Commission approval from 0.4 hectares to 0.2 hectares.[50]

## XI. RIGHT TO PARTICIPATE IN THE POLITICAL PROCESS

54. In light of the October 2000 election, the Government of the United Republic of Tanzania, wary of infiltration by foreigners into top strategic positions in the army, Government and politics, has embarked on a discreet campaign to identify non-Tanzanians and weed them out. The former Ministers of Defence, Industries and Commerce, and Foreign Affairs, and the former Land and Urban Development, Natural Resources and Tourism Ministers all had to fight battles in court to prove and maintain their citizenship.[51]

55. Korean President Kim has pushed the issue of voting rights for Korean permanent residents living in Japan. Long before Kim raised the issue, Korean residents' associations, foreigners' rights groups and civil libertarians in Japan have fought to give permanent foreign residents voting rights in local elections. The idea comes from Europe where many nations give permanent foreign residents the right to vote in local elections. Japanese Prime Minister Mori has come out in favour of the idea, which indicates how far the idea has come as a result of President Kim's prodding. But there are problems: fairness and reciprocity. Also, the permanent residency that Japan offers is more stable than the permanent residency that Korea offers to Chinese residents with Taiwanese (Republic of China) citizenship. Harsh restrictions on business activities of Chinese permanent residents in the past, for example, forced many of them to leave Korea. In every other category of visa status, Korea is more restrictive than Japan.[52]

## XII. RIGHT TO SOCIAL SECURITY

56. The Center for Migration Studies in Canada released a paper noting how efforts to single out immigrant children for the restoration of benefits such as food stamps may fall short of the intended objectives because most children of immigrants are already citizens who never lost their eligibility for benefits in the first place. These benefits restorations may also fall wide of the mark because the citizen children may still suffer the effects of their parents' reduced eligibility.[53]

## XIII. FREE CHOICE OF EMPLOYMENT

57. A British medical exam set by the United Examining Board, a committee of doctors and university academics, was the primary test foreign-trained asylum-seeker and refugee doctors could take to get certified within the United Kingdom. As of May 1998, this exam was under fire by the Professional and Linguistic Assessment Board (PLAB). PLAB claimed that the exam did not properly assess foreign-born doctors' skills and recommended to the British General Medical Council that the test be abolished.[54]

## XIV. RIGHT TO HOUSING

58. Two media-related businesses have set up a housing service in Tokyo to help foreign nationals overcome the "blatant discrimination" practised by some Japanese landlords. The service is run by New Com, a Shinjuku Ward-based publisher of foreign language newspapers, and the Ethnic Media Press Centre, a non-profit organization of such newspapers. "Discrimination toward foreign nationals in their searches for homes continues to be one of the

biggest problems", said Hideki Saito, head of the Press Centre. Organizers of the service said they hope to eradicate the racism that prevents foreigners, particularly non-Westerners, from renting apartments since there are currently no laws in Japan that ban discrimination.[55]

## XV. RIGHT TO EDUCATION

59. A report released by the Irish National Teachers Organization (INTO) in 1998 found that there was no support for the educational needs of asylum-seekers' children from the Department of Education and Science or any other government agency. It notes that five teachers in the Department of Education's Refugee Support Services work with over 70 children in Dublin, which means that most children of refugees and asylum-seekers do not receive support. INTO also considers it "totally unacceptable" that refugee support teachers are "forced to discriminate" between children whose families have officially recognized refugee status and other ethnic minority and asylum-seekers' children "who have the same needs and may sometimes be in the same school".[56]

## XVI. RIGHT TO HEALTH CARE

60. A Canada-based NGO, the Inter-Church Committee for Refugees (ICCR), has reported that babies born to non-citizens in some parts of Canada have been denied health coverage, and there have been deportations and efforts to deport non-citizens in the face of requests by international human rights bodies not to do so. ICCR also reported that refugees have been threatened with deportation in circumstances that fall outside of international standards.[57]

61. A study in the *American Journal of Public Health* claims that 51 per cent of full-time non-citizen workers lack health insurance. The study also shows that country origin makes a big difference in insurance coverage for immigrants. Immigrants are more likely to be insured if they are from countries like Canada, Cuba, Russia and other European nations. Over 50 per cent of all immigrants from Mexico and Central America did not have health insurance; 43.6 per cent of non-citizen immigrants are uninsured, compared with 18.5 per cent of immigrants who have become United States citizens.[58]

62. The district attorney in Houston, Texas, threatened to prosecute the Harris County Hospital District for providing preventive care to undocumented immigrants. Attorney-General John Cornyn stated that a provision of federal welfare reform legislation, called the Personal Responsibility and Work Opportunity Act of 1996, bars the use of public funds to provide free health care for illegal immigrants. District spokeswoman Dinah Massei said about 25 per cent of the public system's patients are undocumented aliens.[59]

63. An amendment to the Constitution of Texas passed in 1999 says that hospitals have "full responsibility for providing medical and hospital care to needy inhabitants of the county". Harris County attorneys say that provision mandates the treatment of undocumented illegal immigrants because of the textual use of the word "inhabitant". Immigrants, regardless of their legal status, clearly inhabit various parts of the state.[60]

64. The Sabah Health Department in Malaysia may hand over immigrants without valid personal identification documents to the police or Immigration Department as soon as they have received medical treatment at government hospitals. Director Saimy Ismail said the move was necessary to overcome the problems of congestion especially in hospitals in major towns. He also stated that based on last year's statistics, about 12 to 15 per cent of the patients at governmental hospitals were illegal immigrants while the figures for outpatients showed that they formed 25 per cent of the total.[61]

65. Under Austrian federal law, the Austrian provinces can require people not living in the country to pay higher hospital charges than Austrian citizens.[62]

66. A decision taken in July 2000 by the Health and Welfare Ministry in Greece to deny undocumented migrants access to medical treatment at State hospitals across the country came under fire by the Association of Hospital Doctors of Athens and Piraeus (EINAP). In a statement, the 8,500-member body characterized the Ministry's decision as "racist" and demanded that it be "immediately repealed". "We refuse to play this game", EINAP President Stathis Tsoukalos told the *Athens News*. "We will not request migrants' documents before we treat them and we will not call the police to report a migrant who is in need of medical assistance", Tsoukalos said.[63]

## XVII. RIGHT TO PARTICIPATE IN THE CULTURAL LIFE OF THE COMMUNITY

67. In March 1999, 48 naturalization applications in a blue-collar suburb of the Swiss city of Lucerne were denied in a popular vote. All those turned down were Turks or people from the former Yugoslavia. Swiss law gives foreigners who meet the residency requirements and have no criminal record the right to apply for Swiss nationality as long as they are integrated into Swiss society. What it means to be integrated into Swiss society has been called into question. The lack of clear guidelines allows room for racist selection of naturalization requests. Swiss human rights groups have banded together to push for laws giving asylum-seekers full social and economic rights, and to get the employment ban on them repealed.[64]

## XVIII. ANTI-TERRORISM MEASURES

68. The terrorist attacks on New York and Washington, D.C., of 11 September 2001 have led Governments around the world to adopt new measures affecting the rights of non-citizens. The United States Government has proposed to establish military tribunals to try foreigners accused of terrorism; to track down and question thousands of immigrants who have entered the United States in recent years, mostly from Middle Eastern countries; and to monitor conversations between people in federal custody and their lawyers. A new attitude in Europe also seems to have taken hold as waves of arrests across Belgium, France, the Netherlands, Spain and the United Kingdom in the months following the terrorist acts in the United States have netted terrorist suspects and far more people, mostly Muslims, whose activities merely seemed suspicious.[65]

69. Some critics of the United States administration argue that non-citizens as well as citizens are entitled to due process, and that there is something un-American about depriving non-citizens of basic procedural protections. "The most troubling thing is the detentions", said Akhil Reed Amar, a professor at Yale University Law School. "Who are these thousand people and what are they being charged with?"[66]

70. Alan Brinkley, a historian at Columbia University, said "habeas corpus is gone, trial by jury is gone. This is one of the most extraordinary assaults on civil liberties, albeit not of citizens, in our history". Except for the internment of Japanese during the Second World War, the United States has never targeted citizens or non-citizens "in measures that would strip from them virtually all of the constitutional protections".[67]

71. The United States Department of State imposed more rigorous screening starting on 14 November 2001 for many Arab and Muslim men seeking visas, a step that has irritated foreign Governments and United States immigrant advocacy groups. The additional background check means that the applicants, from 25 countries, must wait as long as four extra weeks to obtain tourist, student, or business visas.[68]

72. On 15 November 2001, Attorney-General John Ashcroft said interviews with the 5,000 men, ages 18 to 33, who have come to the United States since the beginning of 2000 on student, tourist or work visas must be completed within a month.[69]

73. Britain, criticized by its European neighbours for being too easy on asylum-seekers and dissidents wanted for terror offences abroad, rushed ahead with emergency legislation allowing for their detention without trial for renewable six-month periods. The bill also empowered officials to jail uncooperative witnesses in terror investigations and to search and take into custody airline passengers who aroused suspicion.[70]

74. In Paris, marines and police officers patrolling the subway were given the right to intercept travellers and search their baggage without offering a reason.[71]

75. In Germany, the Government has reintroduced the practice of computer profiling, the search of both public and private records for patterns to help find suspects, which was last seen when the country was fighting its home-grown Red Army Faction terrorist in the 1970s.[72]

## Notes

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